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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. ~~15~~ 6, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA

PART I

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 12, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA.

Comes now defendant, State of California, by its Attorney General, and, answering to the complaint herein, admits, denies and alleges as follows:

I.

Admits the allegations and each them contained in Paragraphs I, III and IV of the complaint. In this connection, defendant alleges as follows:

(1) The State of California (hereinafter sometimes referred to as "the State") is the owner in fee simple of all lands underlying all navigable waters within the boundaries of the State (subject to Legislative grants of portions thereof to the United States and to municipalities and counties, to leases, easements, and other rights granted by the State to various parties or condemned by plaintiff, and to grants by prior sovereigns confirmed by United

States patent, more particularly mentioned in the Second and Third Affirmative Defenses hereof). Fee title thereto vested in the State upon or prior to its admission into the Union as one of the United States of America by Act of Congress of September 9, 1850, admitting the State into the Union "on an equal footing with the original states, in all respects whatever," as expressly provided in said Act.

The original thirteen states (to wit, the States of Massachusetts, Rhode Island, New Hampshire, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina, and Georgia) own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands (except certain portions thereof expressly granted by said States, or by their predecessors, respectively, or condemned by plaintiff) under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays, harbors, rivers, and lakes.

The original thirteen states became vested with title to and ownership of all lands under all such navigable waters at a time prior to the creation or formation of plaintiff, United States of America.

None of the original thirteen states at any time or in any manner conveyed, granted, ceded, or surrendered title or ownership to their respective lands under such navigable waters to plaintiff, United States of America, except as to minor portions thereof specifically granted by State legislative authorization or condemned by plaintiff.

When the State of California was admitted into the Union as one of the United States of America "on an

equal footing with the original states in all respects whatever," it became vested (if it was not the owner thereof prior thereto) with the same ownership in fee simple of and title to all lands under all navigable waters within the boundaries of the State in like manner with the ownership and title of the original thirteen states to lands under such navigable waters within the boundaries of the respective original thirteen states.

The boundaries of the State as established by its Constitution of 1849 and approved by Act of Congress of September 9, 1850, in admitting the State into the Union, extend into the Pacific Ocean at least three English miles from and along the entire coast of California and include all islands, bays, and harbors along and adjacent to the California coast. Reference is hereby made to the allegations of the First Affirmative Defense hereof for further details of the matters alleged in this subparagraph (1) of this Paragraph I.

(2) Plaintiff, United States of America, each of its branches, and various of its departments and agencies, acting within the scope of their authority as prescribed by law, have at all times since the formation of the Union recognized, asserted, determined, and acquiesced in the ownership and title of the original thirteen states to all lands under all such navigable waters within the respective boundaries of said states. Plaintiff has likewise, through each of its branches, and various of its departments and agencies acting within the scope of their authority as prescribed by law, determined, recognized, asserted and acquiesced in the title of the State of California in and ownership of all lands under all navigable waters within the boundaries of the State at all times (with the sole exception mentioned in sub-paragraph 5 hereof), and has re-

quested and accepted from the State of California numerous grants, leases, easements and other interests in and to tide and submerged lands both under the coastal waters of California and under its bays, harbors, rivers and lakes, as in the Second Affirmative Defense hereof more particularly alleged.

(3) The State of California has acted in reliance upon the recognition by plaintiff of the State's ownership of and title to all lands under all navigable waters within the boundaries of the State, as aforesaid, at all times since the year 1850, in making various grants, leases, easements, franchises and licenses to numerous parties, and in assessing and taxing the rights and interests so granted, as in the Third Affirmative Defense hereof more particularly alleged.

(4) Plaintiff, United States of America, its judicial, executive and legislative branches, and various of its departments and agencies acting within the scope of their agency as prescribed by law, have, on numerous occasions ever since the year 1850, uniformly (with the sole exception referred to in sub-paragraph 5 hereof) treated all lands under navigable waters on the open coast of California below the line of mean low water as being owned by the State of California equally with the ownership by the State of all lands below the line of mean high tide of all navigable waters within the exterior boundaries of the State of California, whether situated on the open coast or within harbors, bays, lakes and rivers (except those conveyed by express grant, lease or license by the State or condemned by plaintiff, and except those lands lying below ordinary high water mark contained within the exterior

boundaries of United States patents confirming Mexican or Spanish grants to private individuals and municipalities).

The Federal Courts, the Department of the Interior and the Secretary thereof, the United States Attorney General, the War Department and the Navy Department, and various other departments and agencies of plaintiff, acting within the scope of their agency as prescribed by law, have on various occasions over a period of many years, ruled, decided, determined and asserted that the State of California is the owner of the lands underlying all navigable waters within its boundaries, whether such lands lie below the line of mean low water mark on the open coast or are located within bays, harbors, lakes and rivers. It has only been within the last few months that the present incumbent in the office of the Secretary of the Interior, and the Department of Justice of the United States, have asserted that there is any distinction between the ownership of lands on the open coast below mean low water mark, tidelands along the coast, and tide and submerged lands in navigable bays, harbors, rivers and lakes, despite the fact that plaintiff, all its branches and various of its departments and agencies have since 1850 ruled, determined, decided, recognized, asserted and acquiesced in the fact that there is no distinction whatever in the ownership of the State to all lands underlying navigable waters below the line of ordinary high water mark within the exterior boundaries of the State, including those along the coast. Reference is made to the allegations of the Fourth Affirmative Defense hereof for further details of the matters alleged in this subparagraph (4) of this Paragraph I.

(5) All issues raised by the complaint on file herein have been adjudicated against plaintiff and in favor of defendant in that judgment rendered in the action entitled *United States of America v. Mission Rock Company*, 189 U. S. 391, adjudging that the State of California became vested with title to all tide and submerged lands in the State of California and that the defendant in said action owned the submerged lands there in issue by a grant from the State of California. By reason of the unity and common basis of title of the State to all tide and submerged lands within its exterior boundaries, the question of title in and to all such lands located within the State has, by reason of said judgment, become and now is *res judicata* and *stare decisis* as between plaintiff, United States of America, and defendant, State of California, and its grantees and lessees; as more particularly alleged in the Fifth Affirmative Defense hereof.

II.

Answering Paragraph II of the complaint:

Alleges that defendant does not know and it cannot be determined therefrom what times are referred to in the phrase "all times herein material" or at what time it is alleged that plaintiff became "the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, * * *";

Alleges that defendant does not know and it cannot be determined therefrom whether plaintiff claims to be the owner in fee simple of said lands and properties, or claims merely to be possessed of "paramount rights in and powers over" them;

Alleges that defendant does not know and it cannot be determined therefrom what rights or what powers are referred to in the phrase "paramount rights in and powers over";

Alleges that defendant does not know and it cannot be determined therefrom what waters are referred to in the phrase "inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant by the phrase "extending seaward three nautical miles," as to whether it means three nautical miles seaward from "the ordinary low water mark," or three nautical miles "outside of the inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant or intended by the following phrase in paragraph II of said complaint:

> "the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles . . .";

Alleges that there are numerous bays, harbors and indentations on the coast line of California, among which are: San Diego Bay, Mission Bay, Laguna Bay, Newport Bay, Anaheim Bay, Alamitos Bay, San Pedro Bay, Long Beach Harbor, San Pedro Channel, Santa Monica Bay, Santa Barbara Channel, Hueneme Harbor, Point Mugu Bay, Santa Barbara Harbor, Morro Bay, Monterey Bay, Half Moon Bay, San Francisco Bay, Bodega Bay, Bolinas Bay, Drakes Bay and Humboldt Bay;

Alleges that defendant does not know and it cannot be determined therefrom how, in the case of each of said

bays, harbors and indentations, the line of ordinary low water mark can be ascertained or what is meant by said phrase, as applied to such bays, harbors and indentations, or from what line the area extending 3 nautical miles seaward therefrom would be measured;

Alleges that defendant does not know and it cannot be determined therefrom whether the lands under the aforesaid bays, harbors and indentations along the California coast are claimed by plaintiff in this action;

Alleges that defendant does not know and it cannot be determined therefrom with any reasonable degree of certainty or with any certainty whatever, what lands along the coast of California are claimed by plaintiff in this action;

Denies that plaintiff now is or ever has been the owner in fee simple of or the owner of any title to or interest in the lands or the minerals or other things of value underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California, or any part or portion thereof (except such portions thereof as have been acquired by plaintiff from defendant or its successors in interest by grant, cession, quitclaim, lease or condemnation);

Denies that plaintiff is possessed of any paramount rights in or powers over said lands or minerals or other things of value or any thereof, other than such governmental powers of regulation and control as it possesses with respect to other lands owned by defendant. Denies that such rights and powers, or any thereof, comprise or include any title to or interest in said lands or minerals or other things of value, or any thereof, except such as have been acquired from defendant or its successors in interest by grant, cession, quitclaim, lease, or condemnation.

III.

Answering Paragraph V of the complaint, defendant admits and alleges that it has negotiated and executed leases on lands underlying the Pacific Ocean for the exploitation of the petroleum, gas and other mineral deposits, with numerous persons and corporations. Denies that the lessees to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean are too numerous to name or to make parties to this action. Denies that the lessees, or any of them, to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean have, or that any have, in violation of any asserted rights of the United States, entered upon the said lands, or any part thereof, or drilled wells for the recovery of petroleum or gas or other hydrocarbon substances, or any substances. In this connection defendant alleges that the United States has no right whatever to the petroleum or gas or other hydrocarbon substances, or any rights in connection with exploring for, drilling, removing, taking or using such substances from, in or under any of the lands underlying the Pacific Ocean within the boundaries of the State of California (other than such lands as it has acquired from defendant or its successors in interest by grant, cession, quitclaim, lease or condemnation). Admits and alleges that for a long time last past many of the wells drilled in the lands underlying the Pacific Ocean have been producing quantities of petroleum, gas and other hydrocarbon substances of value which the lessees of defendant have removed, taken, and used, paying defendant the royalties and other considerations as specified in each respective lease. Denies that such lessees have converted to their own use any of such petroleum, gas or other hydrocarbon substances. Admits that neither the State nor its lessees

have recognized any asserted right or any asserted title of the United States, nor have they paid to the United States either the value of any petroleum or other things of value taken from under lands lying under the Pacific Ocean or of any royalties thereon. In this connection defendant alleges that the United States has no right or interest whatever in or to the petroleum or other things of value taken from, in or under the lands under the Pacific Ocean within the boundaries of the State of California.

IV.

Answering Paragraph VI of the complaint, defendant admits and alleges that Pacific Western Oil Corporation is a corporation organized and existing under the laws of the State of Delaware and now occupies and claims, under Lease No. 92, as amended by Lease No. 92a, executed in the year 1929, an area of described tide and submerged lands near Elwood in Santa Barbara County, California.

Admits and alleges that the lands described in Paragraph VI of the complaint are a portion only of the lands leased by the State of California to Pacific Western Oil Corporation extending into the Pacific Ocean and Santa Barbara Channel thereof in the County of Santa Barbara by Lease No. 92, as amended by Lease No. 92a, as therein more particularly described.

Admits that Pacific Western Oil Corporation, under claim of right based on said Lease No. 92, as amended by Lease No. 92a, is now and ever since in or about the year 1929 has been in actual possession of and producing petroleum of value and in substantial quantities from under that portion of the lands described in said Leases situated below the line of mean low tide of the Pacific Ocean and Santa Barbara Channel thereof. Denies that Pacific

Western Oil Corporation is converting the petroleum to its own use. Admits and alleges in this connection that Pacific Western Oil Corporation is producing, extracting, taking and using the oil, gas and other hydrocarbon substances from wells drilled into the lands described in said Lease No. 92, as amended by Lease No. 92a, and is now and at all times material has been paying defendant State of California rents and royalties in accordance with the terms and provisions of said Leases. Upon information and belief, denies that the United States has made demand upon Pacific Western Oil Corporation for the surrender of possession of the lands described in said Lease No. 92, as amended by said Lease No. 92a, or has made demand that Pacific Western Oil Corporation discontinue the extraction or removal of petroleum or other minerals from said land; except that defendant admits and alleges that the United States, without any prior demand upon Pacific Western Oil Corporation as defendant is informed and believes and therefore alleges, on or about May 29, 1945 filed a complaint in the District Court of the United States for the Southern District of California, Central Division, entitled "United States of America, plaintiff v. Pacific Western Oil Corporation, a corporation, defendant," being Case No. 4493-B, Civil, seeking to recover possession of certain tide and submerged lands therein described, as there alleged to contain 144.07 acres more or less; which complaint, without further proceedings in said United States District Court other than the extension of time for said defendant to appear and plead, was, on motion of Plaintiff, United States of America, dismissed on October 19, 1945. Defendant is informed and believes and upon such information and belief alleges that no demand has been made upon Pacific Western Oil Corporation to

surrender possession of the lands attempted to be described in Paragraph VI of the complaint on file herein. Alleges that defendant State of California, by and through its lessee, Pacific Western Oil Corporation is in possession, and at all times since about the year 1929 has been in possession of the area of tide and submerged lands described in said Lease No. 92, as amended by said Lease No. 92a. Alleges that the tide and submerged lands described in said Lease No. 92, as amended by Lease No. 92a, lie under a part of the Santa Barbara Channel, and not in or under the open coast.

V.

Answering Paragraph VII of the complaint, defendant denies the allegations, and each of them, therein contained. Denies that the State of California has no title to or interest in the lands, or any of them, alleged to be in controversy. Denies that the State of California has only those governmental powers over the lands alleged to be in controversy which it has with respect to other lands of the United States within the territorial jurisdiction of the State.

VI.

Answering Paragraph VIII of the complaint, admits that the State of California has claimed to be, and alleges that the State of California has at all times since its admission into the Union on September 9, 1850 and prior thereto, been and is now the owner in fee simple of all lands below the line of ordinary high water mark under all navigable waters within the exterior boundaries of the State (subject to grants and leases by the State to other parties, subject to condemnations by and grants and cessions to plaintiff, and subject to grants of certain portions thereof made by Mexico and Spain and confirmed

by United States patents). Admits and alleges that at all times the State of California has asserted, claimed and announced its said ownership in fee simple of all such lands underlying navigable waters within the exterior boundaries of the State. Admits and alleges that the State of California will continue to claim such title for itself and will continue to exercise all the rights incident to such title. Denies that the State or its lessees or any other person acting under or pursuant to State authority at any time has trespassed or will trespass upon the lands alleged to be in controversy, or any part thereof. Denies that defendant or any of its lessees or anyone acting under authority of defendant State of California, in taking or using the minerals or other things of value from, in or under the lands alleged to be in controversy, will be in violation of any asserted rights of the United States, or that the United States will suffer irreparable, or any, injury, or that there is no adequate, or any, remedy, except by this action.

First Affirmative Defense.

The State of California (hereinafter sometimes referred to as "the State") is the owner in fee simple of all lands underlying all navigable waters within the boundaries of the State, (subject to Legislative grants to the several municipalities and counties, and to grants, leases, easements, and other rights granted by the State to various parties, or condemned by plaintiff, and to grants by prior sovereigns confirmed by United States patent, more particularly mentioned in the Second and Third Affirmative Defenses hereof). Title thus vested in the following manner:

1. Title thereto vested in the State upon or prior to its admission into the Union as one of the United States

of America by Act of Congress of September 9, 1850, admitting the State into the Union "on an equal footing with the original states in all respects whatever," as expressly provided in said Act.

2. The original thirteen states (to wit, the States of Massachusetts, Rhode Island, New Hampshire, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina and Georgia) own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands (except certain portions thereof expressly granted by such states, respectively or condemned by plaintiff) under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays, harbors, rivers and lakes.

3. The original thirteen states became vested with title to and ownership in fee simple of all lands under all such navigable waters at a time prior to the creation or formation of plaintiff, United States of America.

4. This Court has determined and declared, in previous decisions set forth hereinafter, that under the Common Law of England established prior to 1776, the Crown of England was the owner in fee simple of and held title to all lands under all navigable waters, as well under the sea out at least to the three-mile limit, as in bays, harbors, rivers and lakes.

5. The Crown of England, under English law, as declared and announced by this Court in its prior decisions, likewise was the owner in fee simple of and held the title to all such lands under such navigable waters of all English colonies, including the thirteen colonies in America lying on the Atlantic seaboard.

6. Certain of the original thirteen states, prior to statehood and when existing as English colonies, became vested with title to lands under such navigable waters by grant or charter from the Crown of England at various times between 1584 and 1732.

7. The title and ownership of the Crown of England in and to all such lands under such navigable waters, not theretofore granted to the respective colonies, vested in the respective colonies, as sovereign States, upon becoming free and independent States in the year 1776 as subsequently confirmed by the Treaty of Peace of 1783 between the King of England and the original thirteen states.

8. None of the original thirteen states at any time or in any manner conveyed, granted, ceded, or surrendered title or ownership of their respective lands under such navigable waters to plaintiff, United States of America (except as to minor portions thereof specifically granted by State legislative authorization or condemned by plaintiff).

9. When the State of California was admitted into the Union as one of the United States of America "on an equal footing with the original states, in all respects whatever," it became vested (if it was not theretofore the owner thereof) with the same title to and ownership in fee simple of all lands under all navigable waters within the boundaries of the State in like manner with the ownership and title of the original thirteen states to lands under such navigable waters within their respective boundaries.

10. The boundaries of the State as established by its Constitution of 1849 and approved by Act of Congress of September 9, 1850, in admitting the State into the Union, extend into the Pacific Ocean, at least three Eng-

lish miles from and along the coast of California and include all islands, bays and harbors along and adjacent to the California coast.

11. A compact and agreement was formed between plaintiff and defendant upon the admission of the State of California into the Union by Act of Congress of September 9, 1850. Said compact and agreement are forever binding upon plaintiff whereby all tide and submerged lands within the boundaries of the State, subject to the exceptions above noted, became vested in the State by reason of the previously adjudicated and well-recognized meaning of the phrase used in said Act of Admission, to wit, that the State was thereby admitted "upon an equal footing with the original states, in all respects whatever."

12. The details of the manner in which title to tide and submerged lands thus vested in the State of California, and of said compact and agreement to that effect, are set forth as follows:

I.

Defendant State of California was admitted into the Union as one of the United States of America by Act of Congress of September 9, 1850, on an equal footing with the original thirteen states in all respects whatever. Said Act of September 9, 1850 (9 U. S. Stats 452) is in words and figures as follows:

"AN ACT FOR THE ADMISSION OF THE STATE OF CALIFORNIA INTO THE UNION.

Whereas the people of California have presented a Constitution and asked admission to the Union, which constitution was submitted to Congress by the President of the United States by message, dated February thirteen, eighteen hundred and fifty, and

which, on due examination, is found to be republican in its form of government:

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the State of California shall be one, *and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.**

Section 2. AND BE IT FURTHER ENACTED, That, until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

Section 3. AND BE IT FURTHER ENACTED, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor: PROVIDED, That nothing herein contained

*Italics added here and elsewhere in this Answer unless otherwise indicated.

shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

Approved September 9, 1850.

Millard Fillmore

Nowell Cobb
Speaker of the House of Representatives

William R. King
President of the Senate *pro tempore*."

II.

In connection with the enactment by Congress of said Act of Admission of the State of California, defendant State further alleges that:

1. The State of California was, on and prior to the thirteenth day of July, 1846, a Department embraced within the Republic of Mexico, exercising jurisdiction over the territory and people therein, with an existing civil and military government. Under the 1836 Constitution of the Republic of Mexico, the Republic was divided into 24 great departments, one of them constituting the "Department of the Californias," which included both Alta California (the present State of California), and Baja California. (2 Hittell, History of California, page 254.)

2. On May 13, 1846, the Congress of the United States of America declared war on the Republic of Mexico. On July 7, 1846, the naval forces of the United States seized Monterey, California, which was followed by the occupation of other ports; and concurrently therewith and following thereupon the armed forces of the United States seized and occupied the interior settlements within the territory of California. (22 *Bancroft's Works*, 230,

235, 238-407; *Mason, Constitutional History of California,* State Publication, p. 369.) Hostilities in California between forces of the Republic of Mexico and the United States ceased by the armistice effected through the Articles of Capitulation signed at Cahuenga, California, on January 16, 1847. (*22 Bancroft's Works,* pp. 404-407.) Peace was established between the Republic of Mexico and the United States of America by treaty signed on February 2, 1848, at Guadalupe Hidalgo, Mexico, with ratifications exchanged at Quaretaro, Mexico, on May 30, 1848, and proclaimed by the President of the United States on July 6, 1848.

Article IX of said Treaty of Guadalupe Hidalgo provided for the incorporation or admission of the State of California into the Union of the United States of America in words as follows:

> "The Mexicans, who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution: . . ."

By Article II of said Treaty of Guadalupe Hidalgo, it was provided that the political, administrative and judicial branches of the Government should be reestablished.

3. Military commanders of the United States of America, acting pursuant to authorization of the President of the United States, governed the territory and peoples of California from July 7, 1846, to December

20, 1849. (2 *Hittell, supra,* p. 786.) Said military commanders there displaced the civil governor of California holding office under the Government of the Republic of Mexico and the Department of the Californias, but local government as established under the Republic of Mexico was permitted to continue in control of certain of the local affairs both prior and subsequent to the proclamation of the treaty of peace of Guadalupe Hidalgo. (22 *Bancroft's Works,* pp. 606-614; *Mason, supra,* pp. 371-374.) At no time did the Congress of the United States establish California as a territory of the United States, nor did it establish any territorial or other form of civil government for California prior to September 9, 1850.

4. As a result of numerous local movements on the part of the people of California urging the organization of a State government, and as the result of Congress adjourning three consecutive sessions without providing for a civil government in California though the matter was before Congress on each of said three occasions, the military commander in California, on June 3, 1849, called a general election in California, to be held on August 1, 1849, for the election of delegates to a convention for the formation of a State constitution. (2 *Hittell, supra,* pp. 713-714.) That election was held, delegates were elected, and the convention met at Monterey, California, on September 1, 1849. Said convention formed a constitution for the State of California, providing for a State government, which included a bill of rights, suffrage, legislative, judicial and executive branches of government, defined the boundary of the State as hereinafter more particularly alleged, and provided for other matters of State government.

On October 11, 1849, the convention approved certain propositions to be tendered to the Congress of the United States as conditions of admission of the State into the Union, which propositions were tendered as an ordinance by way of articles of compact. These are the propositions referred to in the last proviso of the Act of Admission of September 9, 1850, quoted above. Said propositions provided for Congress to grant the State a section of land in every quarter-township of public lands for school purposes, to grant 72 sections of public lands for a university, to grant four sections for a seat of government, to grant 500,000 acres in addition to the same amount granted by Act of Congress of 1841 for defraying the expenses of State government and other public purposes, to allow 5% of the net proceeds of all sales of public land in the State for the encouragement of learning, to grant all the salt springs and land reserved for use of salt springs embracing at least one section, including such springs, to be disposed of as the Legislature might direct. (*J. Ross Browne, Debates of the California Convention,* pp. 467 *et seq.; 2 Hittell, supra,* p. 274; 23 *Bancroft's Works,* p. 300.)

The Schedule of said Constitution provided that immediately upon ratification by the people, the military governor of California was requested to cause a copy thereof to be forwarded to the President of the United States, in order that he might lay it before the Congress of the United States. Said schedule likewise required that the Senators and Representatives in Congress, elected by the people, be furnished with certified copies of the constitution, when ratified, which they were directed to lay before the Congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the Union.

Said Constitution was adopted by said convention on October 13, 1849. (2 *Hittell, supra,* pp. 756-774; J. Ross Browne, Debates of the Constitutional Convention, 1850.) Said Constitution was thereafter submitted to the electors of the State for adoption or rejection at an election held on November 13, 1849, throughout the State and was ratified by the electors at said election. (*Hittell, supra,* p. 784.) At the same general election, the people of the State of California elected a governor, lieutenant governor, members of the State legislature, two representatives-elect for the Congress of the United States, and two senators-elect for the Senate of the United States, if and when the State was admitted into the Union. (*Hittell, supra,* p. 784.)

5. In and by said Constitution, Article XII, Section 1, the boundaries of the State were fixed and determined as follows:

> "Sec. 1. The boundary of the State of California shall be as follows:
>
> Commencing at the point of intersection of forty-second degree of north latitude with the one hundred twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude: thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line, *to the Pacific Ocean, and extending therein three English*

miles; thence, running in a northwesterly direction and following the direction of the Pacific Coast, to the forty-second degree of north latitude; thence, on the line of said forty-second degree of north latitude, to the place of beginning. Also the islands, harbors, and bays along and adjacent to the coast."

6. Following the adoption of said Constitution, the first Legislature of the State of California met on December 15, 1849. At the first session of said Legislature, the governor and lieutenant-governor took office, the State government was established, and laws were enacted for the civil government of the people of the State. Said first session finally adjourned on April 22, 1850. (*Hittell, supra,* pp. 785-807.)

On April 13, 1850, at the said first session of the said Legislature, a law was enacted adopting the common law of England, so far as not repugnant to the Constitution of the United States or to the constitution or laws of the State of California, as the rule of decision in all the courts of the State. (*Hittell, supra,* p. 799.)

7. On December 20, 1849, Brigadier General Bennet Riley, United States Army, then United States Military Governor for California, resigned as such Governor. No military governor thereafter was appointed or thereafter held such office in the State of California. (2 *Hittell, supra,* p. 786.)

8. All proceedings aforesaid with respect to the *de facto* government of the State of California, the adoption of the Constitution by said State, the establishment of a civil government by the people of the State under said State constitution, and the legislative session aforesaid, were duly reported to the Secretary of War and the President of the United States, were approved and ratified by

the President, and by him reported to the Congress of the United States in his message to Congress on January 21, 1850. (XXI *Congressional Globe; 2 Hittell, supra,* pp. 811-813; *House Executive Document No. 17, 31st Congress, First Session.*) On February 13, 1850, President Taylor by special message to Congress announced the presence of the Senators and Representatives elected to represent the people of the State of California in Congress, submitted the Constitution, propositions, and also a memorial requesting, in the name of the people of California, the admission of the State of California into the American Union. (*2 Hittell, supra,* p. 814.)

Congress debated the question of admitting California into the Union, and on September 7, 1850, said Act of Admission of the State, as hereinabove set forth in full, was enacted by the Congress and was duly approved by the President of the United States on September 9, 1850. (*23 Bancroft's Works,* pp. 336-345.)

In and by said Act of Admission, Congress ratified and approved said boundaries of the State of California as set forth in said Constitution, as aforesaid.

III.

In connection with the admission of the State of California into the Union "on an equal footing with the original states in all respects whatever," as provided in said Act of Congress of September 9, 1850, as set forth in Paragraph I hereof, defendant further alleges that:

The quoted phrase had a well-defined, judicially-determined and firmly-fixed meaning which had theretofore become a fixed rule of law, at the time Congress adopted said phrase in said Act of September 9, 1850,

admitting the State of California into the Union. Said firmly-established rule of law constituted a judicial determination that the State of California thereby became forever vested with title to and ownership in fee simple of all tide and submerged lands, and all lands under all navigable waters lying below the line of mean high water mark within the boundaries of said State, whether within bays, harbors, rivers or lakes, or on the open coast (with the exception of such thereof as had been granted to private individuals by a predecessor sovereign). A compact forever binding upon plaintiff was thereby established between plaintiff and defendant State with respect to defendant's title to and ownership of all such lands, obligating plaintiff to respect forever and to hold inviolable such title and ownership of defendant State.

IV.

The meaning and effect of the phrase "upon an equal footing with the original states in all respects whatever," which had thus crystalized and thus constituted said compact and agreement, was based upon the following principles:

1. This Court has determined and declared in previous decisions that under the Common Law of England established prior to 1776, the Crown of England owned all tide and submerged lands extending out at least to the three-mile limit adjoining his Colonies, as well as adjoining England.

2. The Crown made grants thereof to certain of the American Colonies prior to 1776.

3. The original thirteen states became owners thereof in 1776 or 1783, if not by earlier grant from the Crown.

4. Such tide and submerged lands were not granted to plaintiff upon its formation in 1789 either by the Constitution, or otherwise.

5. The original thirteen states have always retained ownership of such tide and submerged lands, except where specifically granted or condemned.

6. When California was admitted into the Union "upon an equal footing with the original states in all respects whatever," this phrase had an adjudicated meaning to the effect that all tide and submerged lands thereupon vested in the newly admitted State by reason of the fact that such type of lands were vested in the original states.

This meaning and effect of the phrase "on an equal footing with the original states in all respects whatever" developed, became fixed and certain, and constituted said compact and agreement in the following manner.

V.

The Crown of England, in his sovereign capacity, at common law, as declared and announced in previous decisions of this Honorable Court, held the title to and was the owner in fee simple of all tide and submerged lands, and all lands under navigable waters lying below mean high water mark, as well upon the open coast extending at least three miles seaward as within navigable rivers, bays, harbors and lakes.

> 1. "In this sea, the King of England hath a double right, viz. a right of jurisdiction which he ordinarily exerciseth by his admiral, ***and a right of propriety or ownership***. The latter is that which I shall meddle with. The King's right of propriety or ownership in the sea and soil thereof is evidenced principally in these things that follow.

"1st. The right of fishing in this sea and the creeks and arms thereof is ordinarily lodged in the Crown, . . . but though the King is the owner of this great wast, and as a consequent of his propriety hath the primary right of fishing in the sea and the creekes and armes thereof; . . . .

"IId. The next evidence of the King's right and propriety in the sea and the arms thereof is his right of propriety to the shore; and Maritime Increment. . . .

"And thus much of the King's right of propriety which he hath in the sea, and also *prima facie* and in common presumption in the ports and creeks and armes of the sea." (Chief Justice Hale*, "De Jure Maris (Manuscript Circ. 1676), Hargraves Tracts (1787) pp. 10-17.)

2. "The soil of the seashore to the extent of three miles from the beach is vested in the Crown." (*The Company of Free Fishers and Dredgers of Whitstable v. Gann.* (House of Lords, 1865), 144 English Reports 1003).

3. "Clearly the bed of the sea, at any rate for some distance below the low-water mark, and the beds of tidal navigable rivers, are, *prima facie,* vested in the Crown. . . ." (*Lord Fitzhardinge v. Purcell* (1908), 99 Law Times 154, 164.)

4. "I see no reason to doubt that, by the law of Scotland, the solum underlying the waters of the

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*"The great authority in the law of England upon this subject [ownership of the sea] is Lord Chief Justice Hale, whose authorship of the treatise *De Jure Maris,* sometimes questioned, has been put beyond doubt by recent researches (Moore, on the Foreshore, 3d Ed. 318, 370, 413." Mr. Justice Gray, *Shively v. Bowlby,* (1894) 152 U. S. 1, 11, who then proceeds to quote Chief Justice Hale, De Jure Maris, at length and follow him with approval on the law of England.

ocean, whether within the narrow seas, or from the coast outward to the three mile limit, and also the minerals beneath it, are vested in the Crown . . ." (*Lord Advocate v. Wemyss* (House of Lords, (1900) A. C. 48.)

5. "By that law [the common law], the title to the shore of the sea, and of the arms of the sea, and in the soils under tidewater is, in England, in the King. . . . ." (Mr. Justice Field, in *Weber v. Board of Harbor Commissioners* (1873), 85 U. S. 57, 65.)

6. "To the King of England is, therefore, not only assigned the sovereign dominion of the sea adjoining the coasts . . . but in him is also vested the right of property in the soil thereof." (*Angell, Right of Property in Tide Waters* (2d Ed. 1847), pp. 19-20.)

7. "By the common law, both the title and dominion of the sea, and of rivers and arms of the sea where the tide ebbs and flows and of all lands below the high water mark, within the jurisdiction of the Crown of England, are in the King. * * * (*Shively v. Bowlby* (1894), 152 U. S. 1, 11, 13.)

8. "In England, from the time of Lord Hale it has been treated as settled that the title to the soil of the sea, or of arms of the sea, below ordinary high water mark, is in the King, . . .

"The British Seas, sometimes called the Four Seas, are those which encompass the coasts of England, Scotland, and Ireland. To the west they not only include the sea between Great Britain and Ireland, but extend over the Atlantic Ocean, which washes the western coasts of Ireland: this western part of our sea is subdivided; for, so much as runs between England and Ireland, is called St. George's Channel, or the Irish Sea; and the sea on the west coast of Scotland is sometimes named the Caledonian, Deucaledonian, or Scottish Sea, and sometimes the North Sea. To

the east we have the German Ocean, which is bounded principally by the opposite coasts of Germany, and the United Provinces (now Belgium); lastly, to the south there is the British Channel, or Sea, which runs along the French coast, and comprehending the Bay of Biscay, ends with the northern coast of Spain.

"Over the British seas, the King of England claims an absolute dominion and ownership, as Lord Paramount, against all the world. Whatever opinions foreign nations may entertain in regard to the validity of such claim, yet *the subjects of the King of England do, by the common law of the realm, acknowledge and declare it to be his ancient and indisputable right.*

"This dominion and ownership over the British seas, vested by our law in the King, is not confined to the mere usufruct of the water, and the maritime jurisdiction, but it includes the very fundum or soil at the bottom of the seas. 'The sea is the King's proper inheritance,' and he is 'Lord of the Great Waste,' both land and water; *'tam aquae quam soli.'* Selden, in his celebrated treatise on the Dominion of the Seas, would seem to contemplate this ownership of the King, as combining both jurisdiction and ownership; the one, indeed, would seem to involve the other, if Selden's doctrine to its full extent be admitted.

"There are eminent writers upon natural and upon national law, who have controverted Selden's doctrines, and have denied the King of England's exclusive dominion, and consequently his ownership over the British seas, but however this may be, and probably will ever continue, *vexata quaestio* between such writers, we know that the writers on the common and municipal law of England, as well as the decisions of our judicial courts, all speak the same lan-

guage, and appropriate the dominion of the British seas *tam aquae quam soli,* to the King.

"This dominion *not only extends over the open seas,* but also over all *creeks, arms of the sea, havens, ports,* and *tide-rivers,* as far as the reach of the tide, around the coasts of the kingdom. . . .

"Lord Hale, in the treatise ascribed to him, aptly compares the King's *property in the sea* and tide-rivers, creeks, etc., to the ownership of lords of manors in the common or waste lands of the manor.

* * *

"The title of the King of England to the land or soil *aqua maris cooperata,* is similar to his ancient title to all the *terra firma* in his dominions, as the first and original proprietor and lord paramount. It is a fundamental principle of our laws of property in land, that all the lands in the realm belonged originally to the King; and, according to the feudal principles of our ancient laws of tenure, the landowners of England are, to this day, *tenants* to the King, holding their lands of him, as their lord paramount.

"That part of the land which the King and his ancestors *have never granted out to the subject,* remains to the King, as his *demesnes,* in absolute ownership. The *terra firma* of England has become, almost entirely, the property (by grant and tenure) of the subject; but the *terra aqua maris cooperata* still remains to the King in wide and barren ownership.

"Some rare and antique instances may indeed be found of actual grants, by Kings of England, of certain portions of land *under the sea, i. e.* of both sea and land, to a certain extent. These grants have been made in such places where some creek or bay has afforded the means of exclusive possession. Thus, the tract ascribed to Lord Hale, and before quoted, recites a grant of King Canute *'de terra insulae* Thanet,

tam in terra quam in mari et littore;' and another of William the First, *'Abbati Sancti Augustini de tota terra Estanore, et totum littus usque medietatem aquae;'* and the author of the tract adds, *'If the King will grant lands adjacent to the sea, together 'with a thousand acres of land covered by the sea adjoining, such grant will pass the soil itself; and if there should be a recess of the sea, leaving such a quantity of dry land, it will belong to the grantee'.*

"Having stated the law to be that the king is absolute owner of the ground or soil under the surface of those seas which are within, or parcel of the British dominions;—let us proceed to distinguish the lines drawn by the law, between the *terra firma,* the *sea-bottom,* and the *sea-shore."* (HALL, "ESSAY ON THE RIGHTS OF THE CROWN IN THE SEA-SHORES OF THE REALM." (First published in 1830; 3 edition published, Moore, "History and Law of the Foreshore and Sea-shore" (1888) p. 667 *et seq.*)

9. In 1858 an arbitration proceeding was conducted to determine the respective property rights of the Queen of England and the Prince of Wales (who was also Duke of Cornwall) in minerals lying under the seashore of the Duchy of Cornwall between high and low-water marks and also below low-water mark. The arbitration involved the conditions upon which the grant of the duchy was made and the extent and effect of the grant. The decision of the arbitrator was confirmed and ratified by Parliament in "The Cornwall Submarine Mines Act, 1858" (21-22 Vict., Ch. 109) in which the decision was recited as follows:

"first, that the Right to all Mines and Minerals lying under the Seashore between High and Low Water Marks within the said County of Cornwall, and

> under Estuaries and tidal Rivers and other Places even below Low Water Mark, being in and Part of said County, is vested in His Royal Highness as Part of the Soil and territorial Possessions of the Duchy of Cornwall; secondly, that the Right to all Mines and Minerals lying below Low-water Mark under the open Sea, adjacent to but not being part of the County of Cornwall, is vested in Her Majesty the Queen in right of Her Crown * * *."

Said Act confirming and ratifying such decision provided that such mines and minerals lying below low-water mark under the open sea were vested in the Queen in right of Her Crown *"as part of the soil and territorial possessions of the Crown."*

10. During the early period of the Common Law, the Crown of England claimed and asserted title and ownership to the soil and bed of the sea extending far beyond the three-mile limit around Great Britain and the Colonies of the Crown. The title and ownership of the Crown of England to the bed and soil of the sea outside of and beyond the three-mile limit which prevailed under the earlier Common Law, was in the Eighteenth Century and later abandoned by the Crown of England and his title and ownership of such bed and soil was limited to the three-mile belt.

Cecil J. B. Hurst "Whose Is The Bed Of The Sea?" (1923) International Year Book, pages 7, 10, states in part that:

> "The wide claims to jurisdiction over the narrow seas which this country made in the past have fallen into desuetude. There has been no formal renunciation of them and it is merely by disuse that they have lapsed. If the rights of the Crown to the ownership

of the bed of the sea are now more restricted than they were at the time at which Lord Hale was writing, it can only be that they also have been narrowed by disuse.

* * * * * * * *

"To sum up: so far as Great Britain at any rate is concerned, the ownership of the bed of the sea within the three-mile limit is the survival of more extensive claims to the ownership of and sovereignty over the bed of the sea. The claims have become restricted by the silent abandonment of the more extended claims. * * *"

11. As an illustration of an early grant by a King of England of land under the sea, in 1658 the French port of Dunkirk passed to England, which thereafter claimed the ownership not only of the uplands but of the submerged lands in the Channel adjacent to Dunkirk. On October 27, 1662, Charles II sold to France, Dunkirk and its dependencies for the sum of 5,000,000 francs. This sale and transfer included the ownership of submerged lands in the Channel off the coast of France adjoining Dunkirk.

"The sale of Dunkirk and its dependencies *included submerged lands in tidal waters,* tideways, foreshores, uplands, quays, docks, canals, forts, guns, ammunition and the great cathedral." (MERSHON, "THE POWER OF THE CROWN IN THE VALLEY OF THE HUDSON" (1925), p. 13.)

VI.

The Crown of England, by the common law, was likewise the owner of all lands adjoining all English colonial territories (except where he had conveyed the same by charter or grant) under all navigable waters ex-

tending out at least three miles from the coast, as well as under all navigable bays, harbors, rivers and lakes.

"The point is geographically within even three miles of British territory; at that point islands have arisen from the sea. Are those islands no man's land? The answer is they are not; they belong in property to the British Crown." (*Secretary of State for India v. Chelikani Rama Rao* (1916), 43 L. R. Ind. App. 192, 199, 32 T. L. R. 652, P. C.)

"The bed and channel [of the Delaware River] remained in the British Crown, . . ." (*The Tinikum Fishing Co. v. Hartley* (1869), 61 Pa. 213.)

"During the time that Rhode Island was a colony of Great Britain, the fee to land within the colony below high water mark was in the Crown." (*Armour & Co. v. City of Newport* (R. I. 1920), 110 Atl. 645, 646.)

"According to the theory of the British constitution, all vacant lands are vested in the crown, as representing the nation, and the exclusive power to grant them is deemed to reside in the crown, as a branch of the royal prerogative. It has been held then, that this principle was as fully recognized in America as in the Island of Great Britain." (*Martin v. Waddell* (1842) 16 Pet. 367, 410.)

VII.

The Crown of England from time to time between the years 1584 and 1732 executed several grants to the several chartered colonies and colonial proprietors located along the Atlantic seaboard, of tide and submerged lands, as well as uplands, including submerged lands extending seaward of the coastline, as well as those underlying navigable bays, harbors, rivers and lakes. In this connection, defendant alleges that:

1. These grants have been recognized by this Honorable Court:

(a) "The various charters granted by different monarchs of the Stuart dynasty for large tracts of territory on the Atlantic coast conveyed to the grantees both the territory described and the powers of government, *including the property and the dominion of lands under tide water.*" (*Shively v. Bowlby* (1894), 152 U. S. 1, 14.)

"By those charters [from the King of England to the Duke of York] all 'dominion and propriety in the navigable waters, and in the soils under them, passed, as a part of the prerogative rights incident to the political powers conferred on the Duke';" (Shively v Bowlby, supra, p. 16).

". . . Rivers, bays, and arms of the sea, and all prerogative rights within the limitations of the charter undoubtedly passed to the Duke of York, and were intended to pass, except those saved in the letters-patent." (Martin v. Waddell (1842) 16 Pet. 367 at 411.)

(b) The colonial grants are to be interpreted in the light of the circumstance that the grant was for the purpose of enabling the grantee to establish a colony in the New World in which the grantee was to stand in the place of the King of England and administer government according to principles of the British constitution, as this Honorable Court determined in *Martin v. Waddell, supra* (page 412), saying that:

"Taking this rule for our guide, we can entertain no doubt as to the true construction of these letters-patent. The object in view appears upon the face of them. They were made for the purpose of encouraging the Duke of York to establish a colony

upon the newly discovered continent, to be governed, as nearly as circumstances would permit, according to the laws and usage of England; and in which the duke, his heirs and assigns were to stand in the place of the king, and administer government according to the principles of the British constitution. . . . The estate and rights of the king passed to the duke, in the same condition in which they had been held by the crown and upon the same trusts. Whatever was held by the king as a prerogative right, passed to the duke in the same character. And if the word 'soils' be a proper word to pass lands covered with navigable water, as contended for on the part of the defendant in error, it is associated in the letters-patent with 'other royalties' and conveyed as such . . . *And in the judgment of the court, the lands under navigable waters passed to the grantee as one of the royalties* incident to the powers of government, and were to be held by him, *in the same manner, and for the same purposes, that the navigable waters of England, and the soils under them, are held by the crown.*"

2. Some of these grants are the following:

(a) Elizabeth, Queen of England, on March 25, 1584, made a written grant to Sir Walter Raleigh of lands along the Atlantic coast, under which the first step of English colonization in America occurred, known as the North Carolina charter. The conveying clause of said grant reads (2 *Poore, Federal and State Constitutions of the United States* (1878), pp. 1379-1382), in part, as follows:

"And further that the said *Walter Ralegh,* his heires and assignes, and euery of them, shall haue, holde, occupie, and enioye to him, his heires and assignes, and euery of them for euer, all the soile of all such landes, territories, and Countreis, so to bee dis-

couered and possessed as aforesaide, and of all such Cities, castles, townes, villages, and places in the same, with the right, *royalties*[2], franchises, and jurisdictions, *as well marine as other within the saide landes,* or Countreis, *or the seas thereunto adioyning,* to be had, or used, with full power to dispose thereof, and of euery part in fee simple or otherwise, according to the order of the lawes of England, as neere as the same conueniently may bee, at his, and their will and pleasure, to any persons then being, or that shall remaine within the allegiance of us, our heires, and successors reseruing always to us our heires, and successors, for all seruices, duties, and demandes, the fift part of all the oare of golde and siluer, that from time to time, and at all times after such discouerie, subduing and possessing, shall be there gotten and obtained: All which landes, Countreis, and territories, shall for euer be holden of the said *Walter Ralegh,* his heires and assignes, of us, our heirs and successors, by homage, and by the said paiment of the said fift part, reserued onely for all services."

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[2]"Royalties" and "Prerogative rights" of the King of England included the dominion and propriety in the soils under all navigable waters. *Shively v. Bowlby* (1894), 152 U. S. 1, 16, states that:

> "By those [colonial] charters, in view of the principles stated by Lord Hale, . . . 'the dominion and propriety in the navigable waters and the soils under them, passed, as a part of the *prerogative rights* annexed to the political powers conferred on the Duke [of York in the grants to him of 1664 and 1674]; . . .' . . . the lands under the navigable waters pass to the grantee as one of the *royalties* incident to the powers of government; and were to be held by him in the same manner and for the same purposes that the navigable waters of England, and the soils under them, are held by the Crown."

Thus a grant specifically including "prerogative rights" or "royalties" necessarily granted the soil under the navigable waters within the boundaries of the grant.

Said grant was deemed to have lapsed some years after its issuance, as a result of unsuccessful attempts at colonization.

(b) On May 23, 1609, James I, King of England, executed the second charter grant of Virginia, incorporating the London Company under the title of "The Treasurer and Company of Adventurers and Planters of the City of London for the First Colony of Virginia," and thereby enlarged the territory granted under the earlier 1606 grant to the same parties so as to embrace the whole seacoast for 200 miles on each side of Old Point Comfort in Chesapeake Bay, extending from the Atlantic to the Pacific Oceans and also all the islands within 100 miles along the coast of both seas. (*Donaldson, The Public Domain* (1888), p. 32.) The conveying clause of said second grant (2 *Poore,* supra, p. 1900) reads in part:

> "And we do also of our special Grace, certain Knowledge, and mere Motion, give, grant, and confirm, unto the said Treasurer and Company, and their Successors, under the Reservations, Limitations, and Declarations hereafter expressed, all those Lands, Countries, and Territories, situate, lying, and being in that Part of America, called Virginia, from the Point of Land, called Cape or Point Comfort, *all along the Sea Coast* to the Northward, two hundred miles, and from the said Point of Cape Comfort, *all along the Sea Coast* to the Southward; two hundred Miles, and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, *up into the Land throughout from Sea to Sea,* West and Northwest; And *also all the Islands lying within one hundred Miles along the Coast,* of both Seas of the Precinct aforesaid; Together with

all the *Soils,* Grounds, Havens, and Ports, Mines, as well Royal Mines of Gold and Silver, as other *Minerals,* Pearls, and precious Stones, Quarries, Woods, Rivers, Waters, Fishings, Commodities, Jurisdictions, *Royalties,* Privileges, Franchises, and Preheminences within the said Territories, and the Precincts thereof, *whatsoever and thereto, and thereabouts both by Sea and Land, being, or in any sort belonging or appertaining, and which We, by our Letters Patents, may or can grant, in as ample Manner and Sort,* as We, or any our noble Progenitors, have heretofore granted to any Company, Body Politic or Corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers of any Discoveries, Plantations, or Traffic, of, in, or into any Foreign Parts whatsoever, and in as large and ample Manner, as if the same were herein particularly mentioned and expressed; * * *"

(c) On March 9, 1611, James I, King of England, executed a third charter of Virginia to the said Treasurer and Company, again enlarging the grant so as to annex to Virginia all the islands (Bermudas) within 300 leagues of the coast, lying between the thirtieth and forty-first degrees of North latitude. In the granting clause thereof (*2 Poore, supra,* p. 1903), said grant again conveyed the soils, lands, grounds, minerals, etc.,

"both within the said tract of land *upon the main, and also within the said islands and seas* adjoining whatsoever and thereunto or thereabouts, *both by sea and land* being situate."

The Virginia Company was dissolved after pecuniary losses in attempting to colonize America, and the three charters issued to the Virginia Company, as aforesaid, were vacated.

(d) On November 3, 1620, James I, King of England, granted a charter to The Plymouth Company, incorporated it as "The Council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England, in America," and granted territory lying on the Atlantic coast between the fortieth and the forty-eighth degrees of North latitude, extending from the Atlantic to the Pacific Oceans, and confirmed an earlier grant to the same group made in 1606. The granting clause reads (*Poore, supra,* pp. 922-926), in part, as follows:

> "* * * grant, ordaine and establish, that all that Circuit, Continent, Precincts, and Limitts in America, lying and being in Breadth from Fourty Degrees of Northerly Latitude, from the Equinoctiall Line, to Fourty-eight Degrees of the said Northerly Latitude, and in length by all the Breadth aforesaid throughout the Maine Land, from Sea to Sea, *with all the Seas,* Rivers, Islands, Creekes, Inletts, Ports, and Havens, within the Degrees, Precincts, and Limitts of the said Latitude and Longitude, shall be the Limitts, and Bounds, and Precincts of the second Collony: * * * all the aforesaid Lands and Grounds, Continent, Precinct, Place, Places and Territoryes, viz. that aforesaid Part of America, lying, and being in Breadth from *ffourty Degrees* of Northerly Latitude from the Equinoctiall Line, to *ffourty-eight* Degrees of the said Northerly Latitude inclusively, and in Length of, and within all the Breadth aforesaid, throughout all the Maine Lands *from Sea to Sea, together also, with the* Firme Lands, *Soyles,* Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, and *Mineralls,* as well Royall Mines of Gold and Silver, as other Mine and *Mineralls,* precious Stones, Quarries, and all, and singular other Com-

odities, Jurisdictions, *Royalties,* Priveliges, Franchises, and Preheminences, *both within the same Tract of Land upon the Maine, and also within the said Islands and Seas adjoining* * * * to have and to hold, possess and enjoy, all, and singular, the aforesaid Continent, Lands, Territoryes, *Islands,* Hereditaments and Precincts, *Sea, Waters,* Fishings, with all, and all Manner their Commodities, *Royalties,* Liberties, Preheminences, and Profitts, that shall arise from thence, with all and singular, their Appertenances, and every Part and Parcell thereof, and of them, to and unto the said Councell and their successors and Assignes for ever," * * *

(e) On March 4, 1629, Charles II, King of England, confirmed to Sir Henry Roswell and associates a prior grant of the Massachusetts territory lying between parallels three miles north of the Merrimac River and three miles south of the Charles River, extending westward to the Pacific Ocea ., said grant being made to them by the Council of Plymouth in March, 1628. The granting clause thereof reads (*Poore, supra,* pp. 933-935,), in part, as follows:

"* * * and all Landes and Hereditaments whatsoever, lyeing within the lymmits aforesaide, North and South, in Latitude and Bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes, and Wood Groundes, Havens, Portes, Rivers, Waters, and Hereditaments whatsoever, lyeing within the said Boundes and Lymytts, and every Parte and Parcell thereof; and *also all Islandes* in America aforesaide, in the saide Seas, or either of

them, on the Westerne or Easterne Coates, or Partes of the saide Tracts of Landes hereby mencoed to be given and graunted, or any of them; and all Mynes *and Mynerals* whatsoever, in the said Landes and Premisses, or any parte thereof, and free Libertie of fishing in or within any the Rivers or Waters within the Boundes and Lymytts aforesaid, *and the Seas thereunto adjoining;* and all Fishes, Royal Fishes, Whales, Balan, Sturgions, and other Fishes of what Kinde or Nature soever, that shall at any time hereafter be taken in or within the saide Seas or Waters, or any of them, by the said Sir Henry Roswell * * * their Heires and Assignes, or by any other person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein. * * *

"TO HAVE and hould, possesse and enjoy the said partes of New England in America, which lye, extend, and are abutted as aforesaide, and every parte and parcell thereof; *and all the Islands,* Rivers, Portes, Havens, *Waters,* Fishings, Fishes, Mynes, Myneralls, Jurisdiccons, Franchises, *Royalties,* Liberties, Priviledges, Comodities, and Premisses whatsoever, with the Appurtenances, vnto the said Sir Henry Rosewell * * * their Heires and Assignes forever, * * *"

The foregoing charter of Massachusetts and the grant to Roswell and associates was vacated on June 18, 1684, and thereafter, on October 7, 1691, William and Mary, King and Queen of England, granted a new charter consolidating five colonies under the name of Massachusetts Bay. The grant covered the tract of land extending three miles north of the Merrimac River on the north and the Rhode Island colony on the south, the granting

clause of which reads (*Poore, supra,* p. 947), in part, as follows:

> "* * * And all Lands Grounds Places Soiles Woods and Wood grounds Havens Ports Rivers *Waters* and other Hereditaments and premisses whatsoever lying within the said bounds and limitts aforesaid and every part and parcell thereof and *alsoe all Islands and Isletts lying within tenn Leagues* directly opposite to the Main Land within the said bounds and *all Mines and Mineralls* as well Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parte thereof TO HAVE and to hold the said Territories Tracts Countreys Lands Hereditaments and all and singular other the premisses with their and every of their Appurtenances to Our said Subjects and Inhabitants of Our said Province of the Massachusetts Bay in New England and their Successors * * *"

(f) On April 3, 1639, Charles I, King of England, confirmed to Sir Ferdinando Georges a grant of Maine, which had been previously granted to Sir Ferdinando Georges by the Council of Plymouth in 1622, 1629 and 1631. The granting clause of the 1639 confirmatory grant reads (*Poore, supra,* p. 775), in part, as follows:

> "* * * with all and singuler the Soyle and Grounds thereof *as well drye as covered with water* and all *waters Portes Havens and Creekes of the Sea* and *Inletts of the said Province* of Mayne and Premisses as to them or any of them belonginge *or adjacent* as alsoe all Woodes Trees Lakes and Rivers within the said Provynce of Mayne and Premisses and the Lymitts of the same togeather with the Fisheing of

whatsoever kinde as well Pearle as Fishe as Whales Sturgeons or any other either *in the Sea* or Rivers and alsoe All *Royaltyes* of Hawkeing Hunting Fowleing Warren and Chases within the said Province of Mayne and Premisses aforesaid Deere of all sorts and all other Beasts and Fowles of Warren and Chase and all other Beasts there and alsoe All Mynes and Oare of Goulde Silver Precious Stones Tynne Leade Copper Sulphure Brimstone or any other mettall or Mynerall matter whatsoever within the said Province and Premisses or any of them opened or hidden in all Quarries there And all Gould Silver Pearle Precious Stones and Ambergreece whiche shallbee founde within the said Province and Premisses or any of them and the *Lymitts and Coasts of the same* or any of them or any parte of them or any of them and all and singular other Proffitts Benefitts and Commodityes groweing comeing accrueing or happening or to be had perceived or taken *within the said Province and Premisses Lymitts and Coasts* of the same or any of them * * * * togeather *alsoe with all and singuler and as large and ample Rights Jurisdiccons Priviledges Prerogatives Royalties* Libertyes Imunityes Franchises Preheminences and Hereiditaments *as well by the Sea as by Lande* within the said Province and Premisses and the Precincts and Coasts of the same or any of them *and within the Seas belonging or adjacent to them* or any of them as the Bishopp of Durham within the Bishopricke or Countie Palatine of Duresme in our Kingdome of England now hath useth or enjoyeth or of right hee ought to have use or enjoye within the said Countie Palatine as if the same were herein particularly menconed and expressed * * *"

This territory was claimed by Massachusetts Bay colony under the prior grant from the Council of Plymouth to Sir Henry Roswell and associates above mentioned; and in the year 1667 the grandson of Sir Ferdinando Georges deeded the province of Maine by mesne conveyances to the Governor and Company of Massachussetts Bay, thus validating the claim of Massachusetts, which claim was thereafter recognized by the 1691 charter of William and Mary to Massachusetts Bay above mentioned.

(g) In connection with the aforesaid grant of the province of Maine, a grant of the same province of Maine was, on March 12, 1664, made by Charles II, King of England, to his brother, the Duke of York, the latter thereafter becoming King of England as James II, and, upon accession to the throne, merged said grant in the Crown. The granting clause thereof, however, reads (*Poore, supra,* p. 783,), in part, as follows:

> "* * * together with all ye lands *islands soyles* rivers harbours mines *minerals* quarryes woods marshes water lake fishings hawking hunting and fowling and all other *royaltyes* proffitts commodityes and hereditaments to the said *several islands* lands and premisses belonging and appertaining with theire and every of theire appurtenances *and all our estate right rule interest benefit advantage claims and demand of in or to the said lands and premises or any part or parcell thereof* and the revercon and revercons remainder and remainders together with the yearly and other ye rents revenues and profitts of all and singular the said premisses and of every part and parcell thereof to have and to hold *all and singular the said lands islands* hereditaments and premisses with their and every of their appurtenances hereby given and granted or hereinbefore menconed to be

given and granted unto our dearest brother James Duke of Yorke his heires and assignes forever * * *"

This grant to the Duke of York by Charles II was confirmed by a second grant of Maine to the Duke of York by Charles II, King of England, on June 29, 1674, the granting clause being substantially identical to the first grant above set forth (*Poore, supra,* p. 786).

(h) On April 22, 1635, Charles I, King of England, confirmed to Captain John Mason the grant of New Hampshire made to him by The Plymouth Company on November 7, 1629. The identure of November 7, 1629, to Captain John Mason, as aforesaid, recited the grant to The Plymouth Company of New England, situated between the fortieth and forty-eighth degrees of North latitude, and then particularly recited (*Poore, supra,* p. 1271), as follows:

"together with *the seas* and islands lying within 100 miles of any part of said coast of the countries aforesaid and *also all the said soil* * * * mines and *minerals* * * * within any of the said territories and the precincts thereof whatsoever."

The granting clause of the November 7, 1629, grant to Captain John Mason, as aforesaid, after describing the New Hampshire territory conveyed, then provided (*Poore, supra,* p. 1271), in part, as follows:

"* * * together *with all Islands and Islets* within Five League Distance of the Premisses, and abutting upon the same or any Part or Parcel thereof; as also all *Lands, Soyles,* Grounds, Havens, Ports, Rivers, Mines, *Minerals,* Pearls, Precious Stones, Woods, Quarries, Marshes, *Waters,* Fishings, Huntings, Hawkings, Fowling and *other Commodities and Hereditaments whatsoever,* with all and singular

their Appurtenances; together with *all Prerogatives,* Rights, *Royalties,* Jurisdictions, Privileges, Franchises, Liberties, Preheminances, Marine Power, *in and upon the said Seas and Rivers;* as also all Escheats and Casualties thereof, as Flotsam, Jetson, Lagan, with Anchorage, and other such Duties, Immunities, Scotts Islets, and Appurtenances whatsoever, with all of the Estate, Right, Title, Interest, Claim, and Demand whatsoever which the said President and Council, and their successors, of Right ought to have or claim in or to the said Portions of Lands, Rivers, and other the Premisses as is aforesaid, by Reason of Force of his Highness's said Letters-pattents, in as free, large, ample, and beneficial Manner, to all Intents, Constructions, and Purposes whatsoever, as in and by the said Letters-patents the same are amongst other Things granted to the said President and Council aforesaid, except two-fifths of the Oar of Gold and Silver in these Presents hereafter expressed; * * *"

In said confirmatory grant from Charles I to Captain John Mason, dated April 22, 1635, the granting clause reads (*Poore, supra,* p. 1273), in part, as follows:

"* * * togeather with all and singular Havens, Harbors, Cricks, and Yslands inbayed, and *all Islands and Isletts lying within five leagues distance of the Mayne Land* opposite and abbutting upon the Premises or any part thereof, not formerly lawfully granted to any by spetiall name; *and all mines, mineralls,* quaries, *soyles,* and woods, marshes, *waters,* rivers, lakes, fishing, hawkings, hunting, and fowling, and all other *Royaltys,* jurisdictions, priviledges, preheminences, profitts, commoditys, and haereditaments whatsoever, with all and singular theire and every of theire appurtenances, * * *"

By commission of September 18, 1680, Charles II, King of England, appointed a president and council and a general assembly existing at the pleasure of the King to govern the province of New Hampshire, but in said commission Charles II expressly recognized the grant of New Hampshire to John Mason, as aforesaid, and these grants remained in full force and effect down to and beyond the date of the Revolution in the year 1776. (*Poore, supra.* p. 1278.)

(i) On April 23, 1662, Charles II, King of England, issued a charter incorporating "The Company and Society of Our Colony in Connecticut in America," and granted the Connecticut province to said Company, with the granting clause reading (1 *Poore, supra,* pp. 256, 257), in part, as follows:

> "* * * with the Islands thereunto adjoining, together with all firm Lands, Soils, Grounds, Havens. Ports, Rivers, Waters, Fishings, Mines, Minerals, precious Stones, Quarries and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises, Preheminences, and Hereditaments whatsoever, within the said Tract, Bounds, Lands, and Islands aforesaid, or to them or any of them belonging. * * *"

The Connecticut constitution of 1776 continued said charter and grant of April 23, 1662, in full force and effect as the organic law of the State of Connecticut, by providing (1 *Poore, supra,* pp. 257, 258), in part, as follows:

> "The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitu-

tion of Government whereby the Legislature depends on the free and annual Election of the People; * * * Be it enacted and declared by the Governor, and Council, and House of Representatives, in General Court assembled, That the ancient Form of Civil Government, contained in the Charter from Charles the Second, King of England, and adopted by the People of this State, shall be and remain the Civil Constitution of this State, under the sole authority of the People thereof, independent of any King or Prince whatever. And that this Republic is, and shall forever be and remain a free, sovereign and independent State, by the Name of the STATE OF CONNECTICUT."

(j) On March 12, 1664, Charles II, King of England, granted to his brother, James, Duke of York, the New York area, with the granting clause reading (1*Poore, supra*, pp. 783-784), in part, as follows:

"* * * and also all that Island or Islands commonly called by the severall name or names of Matowacks or Long Island scituate lying and being towards the west of Cape Codd and ye narrow higansetts abutting upon the maineland between the two Rivers there called or knowne by the severall names of Conecticutt and Hudsons River together also with the said river called Hudsons River and all the land from the west side of Conecticutt to ye east side of Delaware Bay and also *all those severall Islands* called or knowne by the names of Martin's Vinyard and Nantukes otherwise Nantuckett *together with all ye lands islands soyles* rivers harbours mines *minerals* quarryes woods marshes *waters* lakes ffishings hawking hunting and ffowling *and all other royalltyes* proffitts commodityes *and hereditaments* to the said *severall islands lands* and premisses belonging and appertaining *with theire and every of theire appurte-*

nances and all our estate right title interest benefitt advantage claime and demand of in or to the said lands and premises or any part or parcell thereof."

In order to perfect the title of the Duke of York to said area after the Duke of York had taken possession of this area from the Dutch by force of arms in 1667 and its recapture by the Dutch and subsequent return to the Duke of York, a second grant was made on June 29, 1674, by Charles II, King of England, to his brother, the Duke of York, with the granting clause reading substantially as contained in the first grant as aforesaid. (2 *Poore, supra*, p. 1328, footnote; *Donaldson, The Public Domain, supra*, p. 43; 1 *Poore, supra*, p. 786.) In February, 1685, James, Duke of York, succeeded his brother, Charles II, as King of England, and thereby the preceding grants to the Duke of York, as aforesaid, became merged into the Crown, with New York thereafter and until 1776 being governed as a Crown colony or plantation province by a series of Royal Governors. (*Donaldson, The Public Domain, supra*, p. 43.)

(k) On June 20, 1632, Charles I, King of England, issued a proprietary charter and grant to Lord Baltimore, who then became proprietor of the province of Maryland, the territory covered by the grant lying between the fortieth degree of latitude on the north and the Potomac River on the south, with an eastward projection of the southern boundary across the peninsula flanking the Chesapeake Bay to the Atlantic coast. (*Donaldson, The Public Domain, supra*, p. 49.) The grant, the original of which was written in the Latin, provides (1*Poore, supra*, pp. 811-812), in part, as follows:

". . . *omnes et singulas Insulas et Insululas* ab Orientali Praedictae Regionis Littore Orientem ver-

sus in Mari Natas vel nascendas *infra decem Leucas marinas ab eodem Littore* scituatas cum omnibus et sigulis Portubus Navium Stationibus Aestuariis Fluminibus et Fretus *ad Regionem vel Insulas praedictas pertinentibus Omnesque Fundos* Terrae Campestria Sylvas Montana Paludes Lacus Flumina Aestuaria et Freta infra Metas Terminos et Limites praedictos scituata seu existentia, cum cujuscunque Generis Piscium tam Balaenarum Sturgeonum *et aliorum Regalium* quam aliorum in Mari Simubus Fretis vel Fluminibus infra Premissa Piscationibus et Piscibus ibidem captis Omnesque insuper Auri Argenti Gemmarum et Lapidum pretiosorum et alias quascunque sive Lapidum sive Metallorum sive alterius cujuscunque Rei aut Materiae Venas Mineras det Fodinas tam apertas quam occultas *infra Regionem Insulas* seu Limites praedictos repertas et reperiendas."

In the 1776 Maryland constitution, Article II, the State of Maryland declared (1 *Poore, supra,* p. 817), in part, that:

"* * * and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter granted by his Majesty Charles I to Caecilius Calvert, Baron of Baltimore."

(1) On March 24, 1663, Charles II, King of England, made a grant to the Earl of Clarendon of the Province of Carolina, out of which the states of North Carolina and South Carolina were later formed. The lands granted were between the thirty-first and thirty-sixth degrees of north latitude, with the granting clause thereof reading (2 *Poore, supra,* p. 1383), in part, as follows:

"* * * together with all and singular ports, harbours, bays, rivers, *isles* and islets belonging to the country aforesaid; and also *all the soil, lands,* fields,

> woods, mountains, fields, lakes, rivers, bays and islets, scituate or being within the bounds or limits aforesaid, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the sea, bays, islets and rivers within the premises, and the fish therein taken; and moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, precious stones, and all other whatsoever, be it of stones, metals, or any other thing whatsoever, found or to be found *within the countries, isles and limits aforesaid.*"

It being later discovered that the colonies of Clarendon and Albemarle were beyond the lands granted in said Charter of 1663, upon petition of the proprietors, Charles II, on June 30, 1665, issued a supplemental grant or charter to the Earl of Clarendon and others, with the granting clause thereof reading (*2 Poore, supra,* p. 1390), in part, as follows:

> "* * * And also, all the soils, lands, fields, woods, mountains, ferms, lakes, rivers, bays and islets, situate or being within the bounds or limits last before mentioned; with the fishings of all sorts of fish, whales, sturgeons, and all other royal fish, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, *together with the royalty of the sea upon the coast within the limits aforesaid;* and moreover all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, metal, or any other thing, found, or to be found, within the province, territory, islets and limits aforesaid: * * * together with all and singular the like and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and franchises of what kind soever, within the territory, isles, islets and limits aforesaid; * * *"

The 1776 constitution of North Carolina, Article XXV, contains a declaration on the part of said State of its ownership of the property in the land and in the seas to be in the people of the State of North Carolina and reads (2 *Poore, supra,* p. 1410), in part, as follows:

> "XXV. The property of the soil, in a free government, being one of the essential rights of the collective body of the people, it is necessary, in order to avoid future disputes, that the limits of the State should be ascertained with precision; and as the former temporary line between North and South Carolina, was confirmed, and extended by Commissioners, appointed by the Legislatures of the two States, agreeable to the order of the late King George II. in Council, that line, and that only, should be esteemed the southern boundary of this State—that is to say, * * *.
>
> Therefore all the territory, *seas,* waters, and harbours, with their appurtenances, lying between the line above described, and the southern line of the State of Virginia, which begins on the sea shore, in thirty-six degrees thirty minutes, north latitude, and from thence runs west, agreeable to the said Charter of King Charles, are the right and property of the people of this State, to be held by them in sovereignty; * * *."

(m) On June 9, 1732, George II, King of England, issued to James Ogelthorpe and others a corporate charter creating the Province of Georgia and making a grant thereof, with the granting clause reading (1 *Poore, supra,* p. 373; 2 *Thorpe, Federal and State Constitutions* (1909), pp. 765 *et seq.*), in part, as follows:

> "* * * and all that share, circuit and precinct of land, within the said boundaries, ***with the islands***

on the sea, lying opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the crown of Great-Britain: *together with all the soils,* grounds, havens, ports, gulfs and bays, mines, as well royal mines of gold and silver, *as other minerals,* precious stones, quarries, woods, rivers, waters, fishings, as well royal fishings of whale and sturgeon as other fishings, pearls, commodities, jurisdictions, *royalties,* franchises, privileges and pre-eminences within the said frontiers and precincts thereof and thereunto, in any sort belonging or appertaining, *and which we by our letters patent may or can grant, and in as ample manner and sort as we may or any of our royal progenitors have hitherto granted* to any company, body politic or corporate, or to any adventurer or adventurers, undertake or undertakers, of any discoveries, plantations or traffic, of, in, or unto any foreign parts whatosever; *and in as legal and ample manner, as if the same were herein particularly mentioned and expressed*: * * *"

VIII.

Upon the American Revolution, all the rights of the Crown of England and of its Parliament (not theretofore granted to the several colonies) vested in the several States, and each of the original thirteen states thereby became the owner of the soil under all navigable waters within its boundaries, including the submerged lands situated within at least three miles of its coast.

1. "For when the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to *all their navigable waters, and the soils under them,* for their own common use, subject only to the rights since surren-

dered by the Constitution to the general government." (*Martin v. Waddell* (1842), 16 Peters 367, 410; *Pollard's Lessee v. Hagan* (1845), 3 Howard 212, 229.)

2. "And upon the American Revolution, all the rights of the Crown and of Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States." (*Shively v. Bowlby* (1894), 152 U. S. 1, 15-16; *M'Ilvaine v. Coxe's Lessee* (1805), 4 Cr. (8 U. S.) 209, 210.)

3. "When the Revolution took place, the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them, subject only to the rights since surrendered by the Constitution. Martin v. Waddell, 16 Pet. 410." (*Mumford v. Wardwell* (1867), 6 Wall. 423, 436.)

IX.

In the treaty of peace between the King of England and the thirteen original States, upon the termination of the American Revolution, the King expressly relinquished to the respective thirteen States, individually, all his right and title in the lands of the several States.

1. In the "Preliminary Articles of Peace" between the King of England and the original thirteen States, dated November 30, 1782, Article I thereof reads, in part, as follows:

"His Brittanic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode-Island & Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina and

Georgia, to be free, sovereign and independent States; that he treats with them as such: . . ."

Article 2 (d) describes the boundaries and contains the phrase:

". . . comprehending all Islands within twenty leagues of any part of the Shores of the United States, . . ."

Article 5 thereof reads, in part, as follows:

"It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the Restitution of all Estates, Rights and Properties, which have been confiscated belonging to the real British Subjects." (2 *Miller, Treaties and Other International Acts of the United States,* p. 96.)

2. In the Definitive Treaty of Peace between the King of England and the original thirteen States, dated September 3, 1783, Articles 1st and 2d declare, in part, that:

"Article 1st

"His Brittanic Majesty acknowledges the sd. *United States, viz. New-Hampshire, Massachusetts Bay,* Rhode-Island & Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina & Georgia, *to be free sovereign & Independent States;* that he treats with them as such, and for himself his Heirs & Successors, relinquishes all Claims to the *Government Propriety* & Territorial Rights of the same & every Part thereof.

"Article 2d.

"* * * East, by a Line to be drawn along the Middle of the River St. Croix, from its Mouth in

> the Bay of Fundy to its Source; and from its Source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence; comprehending all Islands within twenty Leagues of any Part of the Shores of the United States, & lying between Lines to be drawn due East from the Points where the aforesaid Boundaries betwen Nova Scotia on the one Part and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are or heretofore have been within the Limits of the said Province of Nova Scotia."

(Definitive Treaty of Peace, signed at Paris September 3, 1783. Ratified by the United States January 14, 1784. Ratified by Great Britain April 9, 1784. Ratifications exchanged at Paris May 12, 1784. Proclaimed January 14, 1784. 2 *Miller, Treaties and Other International Acts of the United States of America,* pp. 152-153.)

3. The Treaty of Peace, December 24, 1814, between His Britannic Majesty and the "United States of America," after the formation of plaintiff United States of America in 1789, makes no reference to any of the individual states. (*2 Miller, supra,* p. 574.)

X.

The soils under all navigable waters within the respective thirteen States were reserved to those States and were not granted by the Constitution to the United States of America upon its formation in 1789.

> 1. "The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states re-

spectively." (*Pollard's Lessee v. Hagan* (1845), 3 How. 212, 229.)

2. "Settled rule of law in this court is, that the shores of navigable waters and the soils under the same in the original States were not granted, by the Constitution, to the United States, but were reserved to the several States; . . ." (*Mumford v. Wardwell* (1867), 61 Wallace 423, 436.)

3. "The soils under tidewaters within the original States were reserved to them respectively, . . ." (*Borax Consolidated Ltd. v. Los Angeles* (1935), 296 U. S. 10, 15.)

XI.

The new States admitted into the Union since its formation in 1789 have the same rights, sovereignty and jurisdiction over the navigable waters and soils under them within the respective boundaries of the new States as the original States possess within their respective borders.

1. "The new states have the same rights, sovereignty, and jurisdiction over this subject as the original states. (*i.e.*) The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively." (*Pollard's Lessee v. Hagan* (1845), 3 How. 212, 229.)

2. ". . . the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf [to the navigable waters and soils under them] as the original States possess within their respective borders." (*Mumford v. Wardwell, supra,* p. 436.)

3. "The soils under tidewaters within the original States were reserved to them respectively, and the

States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands *within their borders* as the original States possessed." (*Borax Consolidated Ltd. v. Los Angeles* (1935), 296 U. S. 10, 15.

XII.

The phrase "on an equal footing with the original thirteen States in all respects whatever," contained in the Act of Admission of the State of California of September 9, 1850, quoted above, originated in the legislation pursuant to which deeds of cession of the so-called "western territory" of the original thirteen States were executed and delivered to plaintiff, United States of America. Likewise the only portion of the uplands, tidelands or submerged lands of the original thirteen States to which plaintiff United States of America has at any time succeeded as owner thereof (which it held in trust for the future States as to all tide and submerged lands), is this so-called "western territory" of certain of the original thirteen States conveyed to plaintiff by special Acts of the legislatures of certain of the original thirteen States, followed by formal instruments of cession of particular areas thereof; or by condemnation proceedings. In this connection defendant alleges that:

1. The Congress of the Confederation of the original thirteen States, acting pursuant to the Articles of Confederation of 1777, and in order to resolve the issue which had theretofore prevented the State of Maryland from ratifying said Articles of Confederation, on September 6, 1780, adopted a Resolution requesting the several States owning territories under their respective colonial grants northwest of the Ohio River, to cede to the Con-

gress their respective territory in the so-called "western" country. Said Resolution contained, in part, the following recital and resolution:

> ". . . . that the act is expressly calculated to accelerate the Federal Alliance, by removing, as far as depends on that State [of Maryland] the impediment arising from the western country, and for that purpose to build up a portion of territorial claim for the general benefit; whereupon, resolved . . . that it be earnestly recommended to those States, who have claims to the western country, to pass such laws, and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the Articles of Confederation; . . ."

On October 10, 1780, the Congress of said Confederation adopted a Resolution committing Congress to dispose of any lands so ceded by the several States to Congress under the resolution of September 6, 1780, for the formation of new states which shall have the same rights of sovereignty, freedom and independence as the original States. Said resolution reads, in part, as follows:

> "Resolved, That the unappropriated lands that may be ceded or relinquished to the United States, by any particular State, pursuant to the recommendation of Congress of the 6th day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, *and have the same rights of sovereignty, freedom, and independence, as the other States:* . . ." (*Donaldson, The Public Domain* (1884), *supra,* p. 64.)

2. On March 1, 1781, the State of New York, pursuant to said Resolutions of Congress of the Confedera-

tion of 1780, as aforesaid, by and through her delegates in the Continental Congress, executed and delivered a deed to the Congress, pursuant to an Act of the Legislature of the State of New York of September 12, 1780, thereby ceding title, ownership and jurisdiction over the western part of the then State of New York, more particularly described in said deed, to and for the use and benefit of such of the States as were then or thereafter became parties to the Articles of Confederation.

On October 29, 1782, Congress, on behalf of the Confederation, accepted said cession from the State of New York. (*Donaldson, The Public Domain, supra,* pp. 65-67.)

3. On January 2, 1781, the State of Virginia, by an Act of her Legislature or General Assembly, submitted a proposition for the cession to the Congress of the Confederation of the western lands of the State of Virginia.

By an Act of September 13, 1783, the Congress of the Confederation agreed to receive and accept said western lands.

The State of Virginia, by an Act of her Legislature of October 20, 1783, authorized the delegates of the State of Virginia in the Congress of the Confederation to consummate said transfer by execution and delivery of a formal instrument. On March 1, 1784, the State of Virginia, through her delegates in the Continental Congress, executed and delivered a formal instrument ceding to the Congress of the Confederation for the benefit of the future states, all her right and title to the territory within the limits of the colonial charter of Virginia above-mentioned, lying to the northwest of the Ohio River. (*Donaldson, The Public Domain, supra,* pp. 67-69.)

4. The Congress of the Confederation on April 23, 1784, adopted a Resolution for the government of the territory northwest of the Ohio River thus ceded to the Congress and the Confederation by the States of New York and Virginia, as aforesaid. Said Resolution provided for the formation of new states out of portions of the territory lying northwest of the Ohio River thus ceded, which new states were to be admitted into the Congress of the United States on *"an equal footing with the original states."* Said Resolution in this connection reads, in part, as follows:

> "That whensoever any of the said States shall have, of free inhabitants, as many as shall then be in any one the least numerous of the thirteen original States, such State shall be admitted by its delegates into the Congress of the United States, *on an equal footing with the said original States;* . . ." (*Donaldson, The Public Domain, supra,* pp. 148, 149.)

5. On November 13, 1784, the General Court of Massachusetts authorized her delegates in the Congress of the Confederation to execute a cession to the Congress and Confederation of all the western rights of the State of Massachusetts. On April 19, 1785, the State of Massachusetts, by its delegates in Congress, executed and delivered to the Congress and the Confederation a deed of cession conveying ownership and jurisdiction within the territory of the limits of the colonial charter of Massachusetts, as aforesaid, lying westerly of a line more particularly described in said deed.

On April 19, 1785, the Congress and the Confederation adopted a Resolution accepting said deed of cession from the State of Massachusetts. (*Donaldson, The Public Domain, supra,* pp. 71-72.)

6. Like cessions were made (i) by the State of Connecticut to the Congress and the Confederation on September 13, 1786, by formal act of its Legislature and by formal deed of cession which was duly accepted by the Congress and the Confederation on September 14, 1786, of all the western lands of the State of Connecticut; and (ii) by the State of South Carolina on August 9, 1787, executing and delivering to the Congress and the Confederation a deed of cession conveying its western territory more particularly described in said deed, which cession was duly accepted by said Congress on August 9, 1787. (*Donaldson, The Public Domain, supra,* pp. 72-76.)

7. On July 13, 1787, the Congress of the Confederation adopted an Ordinance entitled "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio." Said Ordinance provided for the establishment of civil government in the territories thus ceded to the Congress and the Confederation by the several States aforesaid. By said Ordinance, "Articles of Compact" between the original States and the peoples of said territory, declared to remain forever unalterable, unless by common consent, provided for the establishment of new States to be formed out of portions of said territory thus ceded by said States.

Certain of the conditions thus established by said Ordinance for the formation of new States in the Northwest Territory have been fairly uniformly incorporated in and made a part of the Acts of Admission of each of the several States newly admitted into the Union since the formation thereof, including the Act of Admission of the State of California, as hereinafter more particularly alleged. One of such conditions is that each State thus admitted shall

be admitted on *"an equal footing with the original States in all respects whatever."* Said Ordinance reads, in this connection, as follows:

> "Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, *on an equal footing with the original States, in all respects whatever;* and shall have the liberty to form a permanent constitution and State government: . . ."

Other conditions contained in said Ordinance likewise employed in Acts of Admission of newly formed States, including the State of California, provided that the legislatures of the new States shall never interfere with the "primary disposal of the soil" by the United States in Congress assembled; that no tax shall be imposed by said new States on lands the property of the United States; and that the navigable waters shall be common highways and forever free from any tax, impost or duty. (*Donaldson, The Public Domain, supra*, pp. 153-156.]

8. After the formation of plaintiff, United States of America, under the Constitution of 1789, plaintiff succeeded to the ownership of the Congress and the Confederation in and to the "western lands" ceded to the Congress and Confederation, as aforesaid, by the States of New York, Virginia, Massachusetts, Connecticut and South Carolina

9. The first session of the Congress of the United States of America, immediately after the formation thereof under the 1789 Constitution, enacted a statute approved August 7, 1789 reciting that:

> "Whereas, in order that the ordinance of the United States in Congress assembled, for the govern-

ment of the territory northwest of the River Ohio, may continue to have full effect, it is requisite that certain provisions should be made so as to adopt the same to the present Constitution of the United States:"

And thereupon legislated with respect to said Ordinance for the Northwest Territory as to communications between the governors of the territories and the President of the United States, and like matters. (2 *Thorpe, Federal and State Constitutions* (1909), p. 963.)

10. Thereafter, the State of North Carolina executed and delivered to plaintiff, United States of America, on February 25, 1790, a deed of cession of its western territory, being the territory now constituting the present State of Tennessee, which deed of cession was pursuant to an Act of the Assembly of the State of North Carolina, adopted December 22, 1789. (*Donaldson, The Public Domain, supra,* pp. 76-78.)

11. Likewise, the State of Georgia, on April 24, 1802, ceded to plaintiff, United States of America, pursuant to an Act of the Legislature of the State of Georgia, the entire territory west of the present western boundary of the State of Georgia and east of the Mississippi River. (*Donaldson, The Public Domain,* pp. 79-81.)

XIII.

The Acts of Congress enabling territories to form constitutions and state governments, and admitting the newly-formed States into the Union, prior to the Act of Admission of the State of California, contained provisions substantially identical with the provisions contained in the Act of Admission of the State of California, aforesaid. These provisions were substantially the same as those conditions

specified in the Ordinance of 1787 to govern the Northwest Territory, as aforesaid. These same provisions were contained in the Enabling Acts and Acts of Admission of the newly-formed states, whether formed out of the Northwest Territory ceded to the Congress and the Confederation and plaintiff, as aforesaid, or formed out of territory purchased by plaintiff, United States of America, as in the case of the 1803 Louisiana Purchase from France or derived under the Treaty of Gaudalupe Hidalgo of 1848, as aforesaid. In this connection defendant alleges:

1. The State of Tennessee was admitted into the Union by Act of Congress approved June 1, 1796, providing that said State "is hereby declared to be one of the United States of America, *on an equal footing with the original states in all respects whatever,* by the name and title of the State of Tennessee." (6 *Thorpe, supra,* p. 3414.)

2. The State of Ohio was formed and admitted into the Union under Enabling Act of Congress approved April 30, 1802, which provided that said State when formed *"shall be admitted into the Union upon the same footing with the original states in all respects whatever."* (5 *Thorpe, supra,* p. 2897.)

3. The State of Louisiana on April 8, 1812 (3 *Thorpe, supra,* p. 1378), the State of Indiana on December 11, 1816 (2 *Thorpe, supra,* p. 1057), the State of Mississippi on December 10, 1817 (4 *Thorpe, supra,* p. 2032), the State of Illinois on December 3, 1818 (2 *Thorpe, supra,* p. 972), the State of Alabama on December 14, 1819 (1 *Thorpe, supra,* p. 195), the State of Maine on March 3, 1820 (3 *Thorpe, supra,* p. 1645), the State of Missouri on March 2, 1821 (4 *Thorpe, supra,* p. 2148),

the State of Arkansas on June 15, 1836 (1 *Thorpe, supra,* p. 264), the State of Michigan on January 26, 1837 (4 *Thorpe, supra,* p. 1930), the State of Florida on March 3, 1845 (2 *Thorpe, supra,* p. 662), the State of Iowa on March 3, 1845 (2 *Thorpe, supra,* p. 662), were each admitted to the Union by Act or Resolution of the Congress of the United States, each such Act or Resolution using verbatim the language that each such state *"shall be admitted into the Union on an equal footing with the original states, in all respects whatever."*

4. The State of Texas was admitted into the Union by Resolution of Congress approved March 1, 1845, which provided in part that Texas

> "shall be admitted into the Union, by virtue of this Act, on an equal footing with the existing States, as soon as the terms and conditions of such admission and the cession of remaining Texas territory to the United States shall be agreed upon by the governments of Texas and the United States." (6 *Thorpe, supra,* p. 3545.)

XIV.

In this connection, defendant particularly alleges that the Resolution of Congress for the admission of the State of Alabama, approved December 14, 1819, as aforesaid, by which said State "was admitted into the Union on an equal footing with the original States, in all respects whatever," also made particular reference to the Enabling Act of Congress of March 2, 1819, for the people of Alabama to form a constitution and State government. Said Enabling Act of Congress of March 2, 1819, provided, in part, that:

> (i) "all navigable waters within the said State shall forever remain public highways, free to the citi-

zens of said State and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said State"

and

(ii) "that they [the People of Alabama] forever disclaim any right and title to the waste or *unappropriated lands* lying within the said Territory; and that the same shall be and remain at the sole and entire disposition of the United States; . . ." (1 *Thorpe, supra,* p. 94.)

1. The foregoing phrases in the Alabama Enabling Act are substantially identical with the like phrases contained in the Act of Admission of the State of California of September 9, 1850, above quoted, namely: (i) that the State is admitted into the Union "on an equal footing with the original States in all respects whatever"; (ii) that the State "shall never interfere with the primary disposal of the public lands within its limits and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned," and (iii) that "all the navigable waters within said State shall be common highways and forever free."

2. These quoted phrases from the Alabama Act of Admission had been adjudicated prior to 1850 by this Honorable Court in its decision relating to the Enabling Act of the State of Alabama, being identical or substantially identical with the same phrases contained in the Act of Admission of the State of California as aforesaid. In this connection, defendant alleges that:

(i) In the year 1842, this Honorable Court determined, in the case of *Martin v. Waddell,* 16 Peters 366, 410, that each of the original thirteen States,

upon the Revolution, themselves became sovereign and in that character hold the absolute right to all their navigable waters and the soils under them, succeeding, at said time or earlier, to the title thereto formerly owned by the Crown of England; and adjudicated that the State of New Jersey, one of the thirteen original States, was the owner of the land there in question lying beneath the navigable waters of Raritan Bay and Raritan River.

(ii) In the year 1845, approximately five years prior to the compact entered into between plaintiff and defendant State of California, in the Act of Admission of the State of September 9, 1850, this Honorable Court determined and adjudicated, in *Pollard's Lessee v. Hagan,* 3 Howard 212, 229, that the State of Alabama, pursuant to the Act of Admission of Congress admitting said State into the Union "on an equal footing with the original States in all respects whatever," thereby became owner of all navigable waters, and the soils under them, within the boundaries of that State, which ownership this Honorable Court there held was essential in order that the State of Alabama be on an equal footing with the original thirteen States in all respects whatever, under the compact between the State of Alabama and plaintiff, United States of America, formed by the Act of Admission of said State, and in accordance with the principle theretofore adjudicated by this Honorable Court in *Martin v. Waddell, supra.*

(iii) This Honorable Court likewise adjudicated, in the year 1845, in its decision of *Pollard's Lessee v. Hagan, supra,* that the condition in the Act of

Admission of the State of Alabama, hereinabove set forth, that:

> "all navigable waters within the said State shall forever remain public highways free to the citizens of said State, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State"

was not intended by Congress and was not understood to mean, and did not mean, that said State of Alabama did not become the owner of all lands under all navigable waters within its boundaries. This Honorable Court there adjudicated the meaning of said quoted phrase to be that the Congress would simply continue to have its power to control commerce among the several states, as provided in Article I, Section 8, of the United States Constitution.

(iv) This Honorable Court likewise adjudicated in *Pollard's Lessee v. Hagan, supra,* that the provision in the Act of Admission of the State of Alabama, hereinbefore quoted, whereby the People of Alabama disclaim title to the "waste or unappropriated lands" within said State and agree that such lands "shall be and remain at the sole and entire disposition of the United States," was not intended by Congress and was not understood by plaintiff and Alabama to mean, and did not mean, that lands underlying the navigable waters of said State were thereby to remain at the sole disposition of the United States or that the State of Alabama disclaimed title to such lands underlying navigable waters. This Honorable Court there held that said phrase referred solely to the "public lands," and authorized the establishment

of rules and regulations respecting the sales and disposition of such public lands, but that the term "public lands" did not thereby include the lands in question, to-wit, the lands underlying the navigable waters within the boundaries of the State of Alabama.

(v) In *Pollard's Lessee v. Hagan, supra,* an Act of the Congress of the United States of July 2, 1836, was involved, whereby Congress attempted to grant, approximately 17 years after the admission of the State of Alabama into the Union, to one William Pollard, submerged lands situated within Mobile Bay in the State of Alabama, and pursuant to which Act of Congress a patent was issued to William Pollard. This Honorable Court there held said patent null and void, and the Act of Congress and the patent issued pursuant thereto ineffective to convey title to tide and submerged lands within the State of Alabama, as this Honorable Court there said (13 *Howard,* 229) that:

> "Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States."

and this Court concluded its opinion in that case by stating the principle of property law ever since recognized and enforced throughout all the States of the Union (p. 229), as follows:

> "By the preceding course of reasoning, we have arrived at these general conclusions: First, The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Secondly, The new States have the

same rights, sovereignty, and jurisdiction over this subject as the original States. Thirdly, The right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case."

XV.

Congress had before it in the year 1850 when it was debating the proposed admission of the State of California into the Union, the Acts of Admission by which the States formed out of the "western lands" ceded to the United States, as aforesaid, were admitted to the Union; the Ordinance of 1787; the language of the Act of Admission of Alabama; and had knowledge of the decision of the United States Supreme Court in *Pollard's Lessee v. Hagan, supra,* and in *Martin v. Waddell, supra.*

With full knowledge thereof, and with the purpose, understanding and intention of admitting the State of California into the Union on an equal footing in all respects whatever with the original States, and with the States admitted into the Union prior to California, the Congress framed the Act of Admission of the State of California in substantially the same terms as those contained in the Act of December 14, 1819, for the admission of the State of Alabama, in order to vest in the State of California all the right, title and sovereignty previously granted to the State of Alabama and theretofore adjudicated and determined by this Honorable Court to have vested in the State of Alabama, including the ownership of all lands under all navigable waters within the boundaries of said State; and in order that the State

of California would have all the right, title and sovereignty of each of the original thirteen States.

XVI.

Subsequent decisions of this Honorable Court have confirmed and approved the meaning and intent of the Congress in the Act of Admission of the State of California on September 1850, as to the phrases "on an equal footing," "primary disposal of the public lands," and "navigable waters to remain public highways," as aforesaid. This Honorable Court has determined on numerous occasions that the State of California became the owner of lands under all navigable waters *within its boundaries* upon its admission into the Union as a result of the Congress admitting it on an equal footing with the original states; and that the reservation to the United States of the right to make "primary disposal of all public lands" did not affect the State's ownership of and title to all such lands under all such navigable waters. In this connection defendant alleges:

1. In the year 1867 this Honorable Court in *Mumford v. Wardwell,* 6 Wall. 423, 436 determined that:

> "California was admitted into the Union September 9, 1850, and the Act of Congress admitting her declares she is so admitted on an equal footing, in all respects, with the original States. (9 Stat. at L. 452.) Settled rule of law in this court is that the shores of navigable waters and the soils under the same in the original States were not granted by the Constitution, to the United States, but were reserved to the several States."

2. In the year 1873 this Honorable Court in *Weber v. Board of Harbor Commissioners,* 85 U. S. 57, 65, determined that:

> "Although title to the soil under the tide waters of the Bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon an equal footing with the original States, absolute property in and dominion and sovereignty *over all soils under the tide waters within her limits* passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, . . ."
>
> Citing *Pollard's Lessee v. Hagan,* 3 How. 212, and *Mumford v. Wardell,* 6 Wall. 436.

3. In the year 1891 this Honorable Court in *San Francisco v. LeRoy,* 138 U. S. 656, 670, determined that:

> "As to tide-lands, although it may be stated as a general principle — and it was so held in *Weber v. Board of Harbor Commissioners,* 18 Wall. 57, 65, — that the titles acquired by the United States to lands in California under tide-waters, from Mexico, were held in trust for the future State, so that their ownership and right of disposition passed to it upon its admission into the Union, . . ."

4. In the year 1891 this Honorable Court, in *Knight v. U. S. Land Association,* 142 U. S. 161, 183, determined that:

> "It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the several States, and that

the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess *within their respective borders. Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229; *Goodtitle v. Kibbe,* 9 How. 471, 478; *Mumford v. Wardwell,* 6 Wall. 423, 436; *Weber v. Harbor Commissioners,* 18 Wall. 57, 65. Upon the acquisition of the territory from Mexico the United States acquired the title to tide lands equally with the title to upland; but with respect to the former they held it only trust for the future States that might be erected out of such territory."

5. In the year 1903, this Honorable Court, in *United States v. Mission Rock Company,* 189 U. S. 391, 404, determined that:

"The title and dominion which a State acquires to lands under tidewaters by virtue of her sovereignty received elaborate consideration, exposition and illustration in the case of *Shively v. Bowlby,* 152 U. S. 1, 58. Prior cases are there collected and quoted, among others, *Weber v. Commissioners,* 18 Wall. 57, 65. From the latter as follows (and the case concerned tide lands in California): 'Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters ***within her limits*** passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, * * *"

6. In 1921, the United States of America itself contended before this Honorable Court that the State of California acquired title to submerged lands, in the case of *United States of America v. Coronado Beach Company,* 255 U. S. 472, 487-488, where Mr. Justice Holmes stated that:

> "The jurisdiction of the decree and the validity of the patent, so far as they cover the tidelands, is denied by the United States, *a special reason being found in the fact that California became a state in 1850, and thereby acquired a title to the submerged lands before the date of the decree.* But the title of the state was subject to prior Mexican grants."

7. In 1935, this Honorable Court, in *Borax Consolidated, Ltd., v. Los Angeles,* 296 U. S. 10, 15, determined that:

> "The controversy is limited by settled principles governing the title to tidelands. The soils under the tidewaters within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands *within their borders* as the original States possessed. *Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229, 230; *Goodtitle v. Kibbe,* 9 How. 471, 478; *Weber v. Harbor Commissioners,* 18 Wall. 57, 65, 66; *Shively v. Bowlby,* 152 U. S. 1, 15, 26. This doctrine applies to tidelands in California. *Weber v. Harbor Commissioners, supra; Shively v. Bowlby, supra,* pp. 29, 30; *United States v. Mission Rock Co.,* 189 U. S. 391, 404, 405. Upon the acquisition of the territory from Mexico, the United States acquired the title to tidelands equally with the title to upland, but held the former only in trust for

the future States that might be erected out of that territory. *Knight v. United States Land Assn.*, 142 U. S. 161, 183. There is the established qualification that this principle is not applicable to lands which had previously been granted by Mexico to other parties or subjected to trusts which required a different disposition,—a limitation resulting from the duty resting upon the United States under the treaty of Guadalupe Hidalgo (9 Stat. 922), and also under principles of international law, to protect all rights of property which had emanated from the Mexican Government prior to the treaty. *San Francisco v. Le Roy*, 138 U. S. 656, 671; *Knight v. United States Land Assn., supra; Shively v. Bowlby, supra.* That limitation is not applicable here, as it is not contended that Mormon Island was included in any earlier grant. See *DeGuyer v. Banning*, 167 U. S. 723.

"It follows that if the land in question was tideland, the title passed to California at the time of her admission to the Union in 1850. That the Federal Government had no power to convey tidelands, which had thus vested in a State, was early determined. *Pollard v. Hagan, supra; Goodtitle v. Kibbe, supra.* In those cases, involving tidelands in Alabama, the plaintiffs claimed title under an inchoate Spanish grant of 1809, an Act of Congress confirming that title, passed July 2, 1836, and a patent from the United States, dated March 15, 1837. The Court held that the lands, found to be tidelands, had passed to Alabama at the time of her admission to the Union in 1819, that the Spanish grant had been ineffective, and that the confirming Act of Congress and the patent conveyed no title. The Court said that 'The right of the United States to the public lands, and the power of Congress to make all need-

ful rules for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy.' *Pollard v. Hagan, supra.* See also *Shively v. Bowlby, supra,* at pp. 27, 28; *Mobile Transportation Co. v. Mobile,* 187 U. S. 479, 490; *Donnelly v. United States,* 228 U. S. 243, 260-261."

8. In the year 1938, this Honorable Court, in *United States v. O'Donnell,* 303 U. S. 501, 519, stated that:

> "After pointing out that the State of California retained title to tide land below high water mark, and that the United States could not enjoy the use of Mare Island as a naval depot while its shores belonged to the state, he concluded with the recommendation that 'California be invited to relinquish to the United States whatever claim, if any, she may have to the shores or the overflowed land of Mare Island.'"

XVII.

A rule of property law, upon which thousands of titles to property are predicated, has been firmly established in this State as a result of the long line of decisions of this Honorable Court following and applying the principle announced in *Martin v. Waddell, supra,* and *Pollard's Lessee v. Hagan, supra.* As this Honorable Court stated in the year 1903, in *United States v. Mission Rock Company, supra* (189 U. S., at page 406):

> "The decisions cover a period of many years and have become a rule of property and the foundation of many titles."

The foregoing decisions of this Honorable Court have been followed in many decisions of the lower Federal courts and of the State courts.

1. An example of the uniform acceptance of and adherence to the foregoing accepted rule of property law is the following:

The identical property sought to be described in Paragraph VI of the complaint herein (State Tide and Submerged Land Lease No. 92 as amended by Lease No. 92(a)), extending into the Pacific Ocean and Santa Barbara Channel thereof, approximately three-quarters of a mile, and the adjoining submerged lands (State Tide and Submerged Land Lease No. 93), have been the subject of adjudications by the Federal Courts, which have applied and followed the accepted rule of property law resulting from the decisions of this Honorable Court set forth in the preceding paragraphs thereof. These were the companion decisions of the United States District Court for the Southern District of California, *Spalding v. United States*, 17 Fed. Supp. 957, affirmed by the Ninth Circuit Court of Appeals, 97 Fed. (2d) 697, cert. den. by this Honorable Court, 305 U. S. 644, and *Spalding v. United States*, 17 Fed. Supp. 966, appealed to the Circuit Court of Appeals in 97 Fed. (2d) 701. These companion decisions followed and relied upon the earlier decision of the Ninth Circuit Court of Appeals, *Bankline Oil Company v. Commissioner*, 90 Fed. (2d) 899, appealed to this Court, 303 U. S. 362, involving State Tide and Submerged Land Lease No. 89 in the Elwood Oil Field, which Lease No. 89 extends approximately three-quarters of a mile into the Pacific Ocean and Santa Barbara Channel thereof, lying several hundred feet southerly of said Leases 92 and 93. The Circuit Court of Appeals stated in the latter case (90 Fed. (2d) 900) that:

> "The State of California holds the tide lands within its boundaries in its sovereign capacity in trust

'for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein free from interference of private parties'. *Boone v. Kingsbury,* 206 U. S. 148, 183, 273 P. 797, 812. See *Constitution of California,* Article 15; *Illinois Central Railroad Company v. Illinois,* 146 U. S. 387; *Borax Consolidated v. Los Angeles,* 296 U. S. 10; *Heckman v. Swett,* 99 Cal. 303, 33 P. 1099; *Oakland v. Buteau,* 219 Cal. 745, 29 P. (2d) 177. The petitioner's lease was granted pursuant to the Statutes of California, 1921, c. 303, p. 404, entitled, 'An act to reserve all minerals in state lands,' etc. By this act, the state has reserved the mineral deposits in all lands belonging to the state. . . .

* * * * * * * *

"One of the purposes of the aforesaid act . . . is to give to the citizens of the state of California 'an opportunity to intercept the large volumes of oil gravitating seaward to inextricable depths, and to reduce to useful purposes oil, gas and mineral *deposits reposing beneath the ocean's bed.*' Boone v. Kingsbury, 206 Cal. 148, 181, 273 P. 797, 811, *supra.* It was enacted in pursuance of the policy of the state of California 'with respect to the extraction of its minerals *from state lands.*' Boone v. Kingsbury, 206 Cal. 148, at page 185, 273 P. 797, 813, *supra.* The legislation was upheld by the California Supreme Court against the claim that it violated the implied trust under which the state holds its tide lands because the rights granted by the leases do not interfere with such trust, . . .' Boone v. Kingsbury, 206 Cal. 148, at page 183, 273 P. 797, 813, *supra.*"

The United States District Court in *Spalding v. United States,* in ruling on said State Tide and Submerged Land

Leases Nos. 92 and 93, stated (17 Fed. Supp. 957, at 960):

> "The tidelands of California are held by the state in trust for the people for the purpose of navigation, commerce, and fishery. Constitution of California, art. 15, §2; Borax Consolidated v. Los Angeles (1935) 296 U. S. 10, 56 S. Ct. 23, 80 L. Ed. 9; Illinois Central Railroad Co. v. Illinois (1892) 146 U. S. 387, 452, 13 S. Ct. 110, 36 L. Ed. 1018; Forestier v. Johnson (1912) 164 Cal. 24, 127 P. 156; City of Oakland v. Buteau (1934) 219 Cal. 745, 29 P. (2d) 177; Boone v. Kingsbury (1928) 206 Cal. 148, 273 P. 797.
>
> "While the state is prohibited from alienating the tidelands (Constitution of California, art. 15, §3), general leasing statutes allowing their leasing exist. Act 6345, 2 Deering's General Laws of California (1931) p. 3468; Act 6351, 2 Deering's General Laws (1931) p. 3473; Act 8418, Deering's General Laws (1931) p. 4700. The control of some of the State's tidelands has also been transferred from the State to several of its largest cities and counties, through legislative enactments. * * *"

Substantially all the lands under consideration in said *Bankline* and *Spalding* cases were lands below low water mark off the coast of California and said lands extended approximately three-quarters of a mile into the Pacific Ocean and Santa Barbara Channel thereof. The term "tidelands", as used in both of said decisions, was intended to describe and did describe all lands below the elevation of mean high tide off the coast of California and within the boundaries of said leases, and no distinction was made as to lands lying below the line of low water mark and

lands between the line of mean low water mark and the line of mean high water mark.

2. An example of the complete reliance placed by defendant State upon the rule of property law announced in the foregoing line of decisions of this Honorable Court is that of *Boone v. Kingsbury* (1928), 206 Cal. 148; 273 Pac. 797, certiorari denied, 280 U. S. 517. The Legislature of the State of California in 1921 enacted a statute (Stats. 1921, p. 404, chap. 303) providing for the execution of prospecting permits and leases from the State of California to citizens of the State and the United States upon tide and submerged lands within the boundaries of the State of California. Pursuant to said legislation numerous applications for permits and leases of tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel were filed with the state officer in charge. A test suit was brought in the Supreme Court of California in case entitled *Boone v. Kingsbury, supra,* involving a parcel of tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel at Seacliff, Ventura County, to test the validity of said statute and the question of whether or not the State had the power to grant prospecting leases and permits of the tide and submerged lands within the State. The Supreme Court of California, in said decision, determined the statute to be valid and issued a writ compelling the state officer to grant the proper leases. The Court there held that the State of California was the owner of the tide and submerged lands lying in the Pacific Ocean and the Santa Barbara Channel thereof, and in so doing reviewed the decisions of this Honorable Court holding the States to be the owners of the tide and submerged

lands within their borders, quoting at length from such decisions as *Shively v. Bowlby,* 152 U. S. 1, *supra:*

> "That such title to the shore and lands under water is regarded as incidental to the sovereignty of the state—a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery—and cannot be retained or granted out to individuals by the United States. Such title being in the state, the lands are subject to state regulation and control, . . ."

This Honorable Court denied a petition for certiorari in *Boone v. Kingsbury, supra,* 280 U. S. 517.

On the faith of and in reliance upon the decision of the Supreme Court of California in *Boone v. Kingsbury, supra,* which in turn placed complete reliance upon the decisions of this Honorable Court establishing a fixed foundation of title to tide and submerged lands, as aforesaid, the State of California has granted in excess of 100 prospecting permits, oil and gas leases and easements of tide and submerged lands extending into various portions of the Pacific Ocean, Santa Barbara Channel and various arms of the Sea. The lessees from the State under said prospecting permits, leases and easements, in reliance upon said rule of property law, have drilled thereunder in excess of 350 oil and gas wells since the year 1921, and have expended, as drilling and development costs (exclusive of operating and maintenance cost) in excess of $20,000,000.00.

XVIII.

1. In connection with the westerly boundary of the State of California, defendant alleges that the 1849 Constitution of the State of California fixed said boundary as extending into the Pacific Ocean three miles and thence

running in a northerly direction following the Pacific Coast to the intersection with the forty-second degree of north latitude, and thence along said north latitude to the place of beginning, including all the islands, harbors and bays adjacent to the coast. The boundary provision of said 1849 Constitution is quoted above.

2. Said boundaries, as established in Article XII, Section 1, of the 1849 Constitution, were confirmed and retained in identical language in the Constitution of California, adopted in the year 1879, with one slight change of wording in the last sentence thereof, which in the 1879 Constitution reads as follows:

> "Also, including all the islands, harbors and bays along and adjacent to the coast." (1879 Constitution, Article XXI, Section 1.)

3. The westerly boundaries of the fifteen coastal counties of the State of California, as established by the State Legislature from time to time, all extend three miles into the Pacific Ocean.

Section 3902 of the Political Code of the State of California, enacted in the year 1872, as amended, provides that:

> "This State is divided into counties, named, bounded and constituted as provided by law. The several counties of this State, as they now exist, and such other counties as may be hereafter organized, according to law, are hereby recognized as legal subdivisions of the State."

Section 3907 of said Political Code, as enacted in the year 1872, provides that:

> "The words 'in,' 'to,' or 'from,' the ocean shore mean a point three miles from shore. The words 'along,' 'with,' 'by,' or 'on' the ocean shore, mean on

a line parallel with and three miles from the shore."

An example of the westerly boundary of a coastal county of the State, substantially identical with the boundaries of all the other coastal counties of the State, is that of Del Norte County, the northernmost coastal county of the State. Section 3916 of said Political Code establishes the boundaries of said Del Norte County, and provides, in part, that:

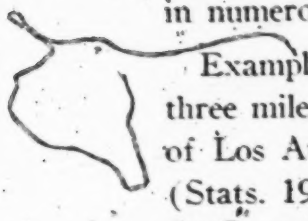
> "Situated in the northwest corner of the State of California, beginning at a point in the Pacific Ocean, on the forty-second parallel of north latitude, three miles from shore, being on the southern line of Oregon; thence running southerly from ocean shore, to the northern line of Humboldt County; thence easterly . . .; thence northerly . . . to the forty-second parallel of north latitude; then due west to the place of beginning."

The other fourteen coastal counties are identical or similar in their respective westerly boundaries extending three miles into the Pacific Ocean, to wit, the Counties of Humboldt (Political Code Section 3920), Mendocino (Section 3931), Sonoma (Section 3957), Marin (Section 3929), San Francisco, which includes the islands known as the Farralones (Section 3946), San Mateo (Section 3949), Santa Cruz (Section 3952), Monterey (Section 3935), San Luis Obispo (Section 3948), Santa Barbara, which includes the channel islands of Santa Barbara, San Miguel, Santa Rosa, and Santa Cruz (Section 3950), Ventura, which includes the channel islands of Anacapa and San Nicolas (Section 3964), Los Angeles, the southerly boundary of which extends into the Pacific Ocean "to the southwesterly boundary line of the State of California (in the Pacific Ocean); thence northwesterly along the southwesterly boundary line of the State of Cali-

fornia to a point of beginning. Also, the islands of Santa Catalina and San Clemente" (Section 3927), Orange, the northerly boundary line of which extends westerly "a distance of three miles, more or less, to the southwesterly boundary line of the State of California . . .; thence southeasterly by state line to point of beginning" (Section 3938), and San Diego, the northerly boundary line of which extends westerly from "the shore line of the Pacific Ocean, and continuing in the same direction to a point three English miles in said Pacific Ocean, which point is on the westerly boundary line of said State of California; thence southerly along said westerly boundary line of the State of California to the place of beginning" (Section 3945).

The boundaries of said coastal counties of the State were established by the State Legislature in the year 1872 or prior thereto and have ever since been so fixed by law, and have been amended from time to time by the Legislature.

4. The boundaries of the municipalities of the State of California lying adjacent to the Pacific Ocean have been established by law as extending three miles into the Pacific Ocean or as being coincident with the westerly boundary line, in the Pacific Ocean, of the State of California, in numerous instances.



Examples of such municipal boundary lines extending three miles into the Pacific Ocean are those of the Cities of Los Angeles (Stats. 1925, p. 1024) and Long Beach (Stats. 1921, p. 2054), as more particularly set forth in the Second Affirmative Defense hereof.

The municipal boundary of the City of Santa Monica extends westerly "to a point in the westerly boundary line of Los Angeles County (in the Pacific Ocean); thence

southeasterly along the aforesaid boundary line to a point . . . ." (Stats. 1907, p. 1007).

The westerly municipal boundary of the City of Santa Barbara extends one-half mile into the Pacific Ocean from the shore line and runs on a line parallel with the shore line and one-half mile therefrom. (Stats. 1917, p. 1824; Stats. 1927, p. 2064.)

Another example of a municipal boundary extending three miles into the Pacific Ocean is that of the City of Avalon on Santa Catalina Island. Said City and Island are situated approximately twenty miles westerly of Point Fermin, being the most westerly point of the mainland shore of the Pacific Ocean in the adjacent vicinity. The municipal boundary line of the City of Avalon, incorporated under the Municipal Incorporation Law as a municipal corporation of the Sixth Class on June 23, 1913, is established as commencing at a designated point in the shore line of the Pacific,

> "thence continuing North 37 deg. 01 min. East to a point three miles out to sea; thence following course of shore line at a distance of three miles out to sea, to a point of intersection of the prolongation northeasterly of the most easterly line of the Town of Avalon, Santa Catalina Island",

as per a designated recorded map.

XIX.

In all the Colonial grants and charters and in all the statutes and court decisions, and in connection with all other matters and things set forth in this First Affirmative Defense, lands beneath navigable waters, whether inland, beneath lakes and rivers or beneath bays and harbors, or off the sea coast, and whether above or below mean low

water mark, have all been treated and considered as being held under a single and common basis of title, namely, as an incident to the sovereignty of the State or of the Crown of England, as the case might be. And the title of the Crown and, subsequently, of the respective States, extended to all lands beneath navigable waters of every kind within the jurisdiction of the Crown and subsequently within the boundaries of each of the respective States. In this connection defendant alleges that the limit of the jurisdiction of the Crown of England and, subsequently, of the boundaries of the respective States, has never been less than 3 miles from the coast line of the open sea and, in the case of bays, harbors and other indentations in the coast line, at 3 miles from and parallel to a straight line connecting the headlands which mark the limit of such bays, harbors or indentations.

Second Affirmative Defense.

1. Plaintiff, United States of America, each of its branches and various of its departments and agencies acting within the scope of their authority as prescribed by law, has, ever since its formation in the year 1789 recognized, asserted, determined, adjudicated and acquiesced in the title and ownership of each of the original States and each of the newly admitted States, including the State of California since its admission in 1850, in and to all tide and submerged lands and all lands below the line of ordinary high water mark within the respective boundaries of each such State (except minor portions thereof granted to private parties or to the United States by the respective States or their grantees, or by prior sovereigns and confirmed by United States patent, or condemned by plaintiff).

2. Such recognition, assertion, determination, adjudication and acquiescence of ownership in the State of California, its grantees and lessees, as well as in the other States, consists of:

(a) Grants and cessions in fee simple made by the respective States to the United States, requested and accepted by the United States, of substantial portions of submerged lands, as well as tidelands, not only along the open coasts within the coastal waters adjacent to and a part of the respective coastal States, but also in and under bays, harbors, rivers and lakes within the respective States.

(b) Leases, easements, licenses and other interests granted by the respective States to the United States, requested and accepted by the United States, of substantial portions of tide and submerged lands, both reclaimed and unreclaimed.

(c) Large numbers of written opinions, prepared by the United States Attorney General and his assistants over many decades, advising the various officers, agencies, branches and departments of the United States, acting within the scope of authority as prescribed by law, in connection with innumerable acquisitions by the United States from the several States, or their grantees of tide and submerged lands, advising that the respective States are the owners thereof. Such opinions of the Attorney General are required by Act of Congress making it the duty of the Attorney General and of his subordinates to render favorable title opinions prior to acquisitions of title to any property by the United States where improvements by the United States are proposed to be constructed thereon or thereto.

(d) Innumerable decisions of the General Land Office, Department of the Interior and the Secretary of the Interior, acting within the scope of authority as prescribed by law, over many decades, determining and holding that title to all tide and submerged lands along the open coast as well as within bays, harbors, rivers and lakes, is held by and owned by the respective States and not by the United States;

(e) Innumerable reports of the Chief of Engineers of the United States War Department and of his subordinates, acting within the scope of authority as prescribed by law, in connection with River and Harbor improvements and other matters, many of them reported to and acted upon by the Congress of the United States, that the respective States are the owners of all such tide and submerged lands, and in innumerable instances recommending appropriations by Congress upon the condition that the respective States or their grantees or successors deed or grant

rights or interests to the United States in and to designated portions of tide and submerged lands both under coastal waters on the open coast of the coastal States and within bays, harbors, rivers and lakes.

(f) Other departments, agencies and officers of the United States acting within the scope of their authority as prescribed by law, have rendered opinions and made statements within their official duties, that the respective States are the owners of all tide and submerged lands within their respective boundaries.

3. The details of said instances of recognitions, assertions, determinations, adjudications and acquiescences on the part of the United States that the title and ownership in and to all tide and submerged lands, is in the respective States, including the State of California, are set forth as follows:

A.

Grants to the United States by the State of California.

The State of California has made numerous grants and conveyances to the United States of America pursuant to requests and solicitations by the United States of America, its several branches, departments and agencies acting within the scope of their authority as prescribed by law, of submerged lands and tide lands both along the coast of California and in its harbors, bays, rivers, and lakes. Some of said grants are the following:

I.

Pursuant to request by duly authorized officers of the United States, the State of California, by an Act of the Legislature of March 9, 1897 (Stats. 1897, page 74) granted to the United States parcels of land extending

from mean high water mark out to 300 yards below mean low water mark lying adjacent and contiguous to such lands of the United States within the State of California as lie upon tidal waters and are held, occupied or reserved for military purposes or defense, or lie adjacent and contiguous to islands the title to which is in the United States and are reserved by the United States for any military or naval purpose or for defense. Said statute provides that the boundaries of each parcel of land thereby granted to the United States shall be a line along mean high water mark, a line 300 yards out beyond mean low water mark, and a line at right angles to mean high water mark at the points where the boundaries of the adjacent lands of the United States touch high water mark. Said statute further provides that the title to each parcel of land thereby granted to the United States shall be and remain in the United States only so long as it shall continue to hold and own the adjacent lands then belonging to the United States.

Likewise, at the request of duly authorized officers of the United States, the Legislature enacted a statute on March 2, 1897 (Stats. 1897, page 51) ceding jurisdiction* to the United States over areas extending out 300 yards from low water mark surrounding military or naval reservations. Said statute was a companion statute to the Act of March 9, 1897, above mentioned. Said Act of March

---

*7 O. A. G. 629, states that:

"The resolution [of Congress] of July 11, 1841 (v. Stat. at Large, p. 408) . . . enacts that it shall be the duty of the head of department under whose direction any lands for the purpose aforesaid (light-houses) may be purchased, to apply to the legislature of the state in which it lies 'for a cession of jurisdiction', and in case of refusal to report the same to Congress."

2, 1897 required the United States to file with the State of California a map depicting the area granted to the United States under and by said Act.

Pursuant to said Acts of March 2nd and 9th, 1897, aforesaid, the United States, through its duly authorized officers, prepared and filed with the office of the Surveyor General of the State of California, 17 different maps depicting various submerged areas, thus granted by the State to the United States, some of said lands lying in the Pacific Ocean and some lying in entrances to bays and in bays and harbors of the State. In this connection defendant alleges that:

1. On June 4, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF SAN DIEGO HARBOR, CALIFORNIA" bearing a legend thereon reading as follows:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicted the Military Reservation situated northerly of the Entrance to the Bay of San Diego extending from Point Loma, the northerly headland of the Entrance to San Diego Bay. A strip of submerged lands 300 yards wide extending oceanward from the line of high water mark bears the legend:

> "Line 300 yards out beyond low-water mark."

Said 300 yard strip of submerged lands runs along the open coast of the Pacific Ocean from Point Loma northward a distance of approximately 3 miles; and likewise extends easterly, without any break, arouhd the tip of Point Loma into the Entrance of and the Bay of San Diego a distance from Point Loma into the Bay of San Diego of approximately 3 miles. Said strip consists of an area in excess of 300 acres of submerged lands both on the open coast of California outside of any harbor, bay, river or lake, and, without any distinction, likewise extends into and around the Entrance to the Bay and into the Bay of San Diego.

A copy of the map dated June 4, 1897, filed with the Surveyor General of the State of California by the United States of America covering the Military Reservation at San Diego, as aforesaid, is set forth as follows:

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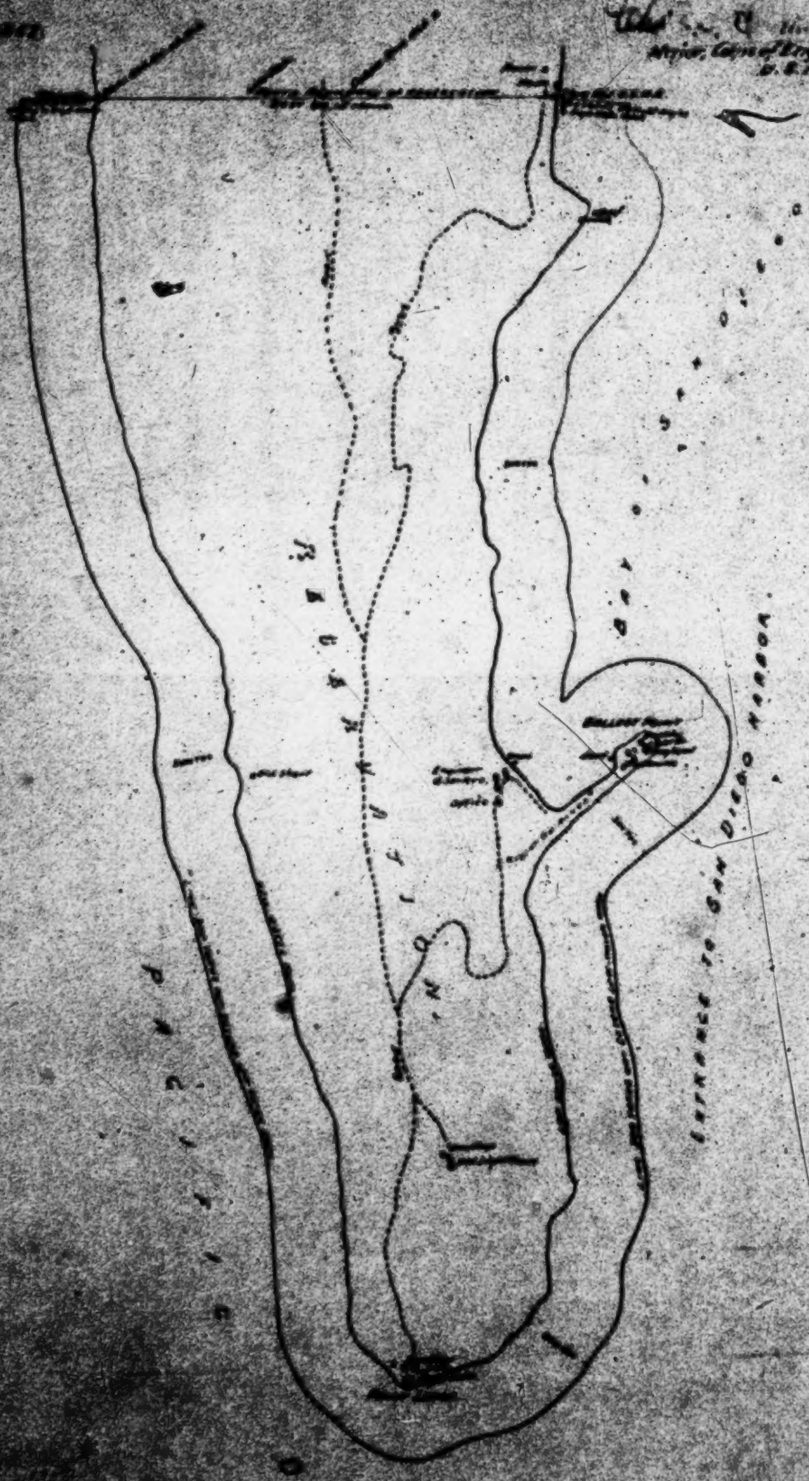
MAP
of the
MILITARY RESERVATION,
San Diego Harbor, California.



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2. On June 4, 1897, the United States of America, through its Officer in Charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed a map with the Surveyor General of the State of California entitled "MAP OF THE ZUNINGA SHOAL TRACT, SAN DIEGO HARBOR, CALIFORNIA." Said map bears the legend:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A. to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1879 (*sic*) and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards wide extending seaward from the low-water mark the exterior line of which bears the legend

"Line 300 yards out beyond low-water mark."

Said strip lies on the open coast of the Pacific Ocean outside and seaward of the entrance to San Diego Harbor, and runs along the coast a distance of approximately 1000 yards covering an area of approximately seven acres of submerged lands on the open coast of California outside of any bay or harbor.

A copy of said "Map of the Zuninga Shoal Tract", filed by the United States of America with the Surveyor General of the State of California as aforesaid is set forth as follows:

3. In April, 1897, the United States of America, by its Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF THE PRESIDIO OF SAN FRANCISCO, CALIFORNIA." Said map shows a strip of submerged lands 300 yards wide extending around the perimeter of the Presidio grounds. The exterior line of said strip bears the legend:

> "A line three hundred (300) yards out beyond low water mark."

Said strip of land contains a further legend:

> "Piece or parcel of land granted, released and ceded to the United States by Act of California Legislature, approved March 9th, 1897."

The westerly portion of said strip, approximately 1⅓ miles in length, is shown on said map adjacent to the legend

"Pacific Ocean."

As said strip turns northerly on said map at the extreme point of the Presidio grounds and runs in an easterly direction it is shown adjacent to the legend on said map reading

"Bay of San Francisco",

and runs a distance of approximately 1½ miles past said point of the Presidio grounds. Said strip 300 yards wide and approximately 2½ miles in length, is depicted on said map, as to approximately 45% thereof, as being situated on and along the "Pacific Ocean" with the balance of said strip lying on and along the "Bay of San Francisco."

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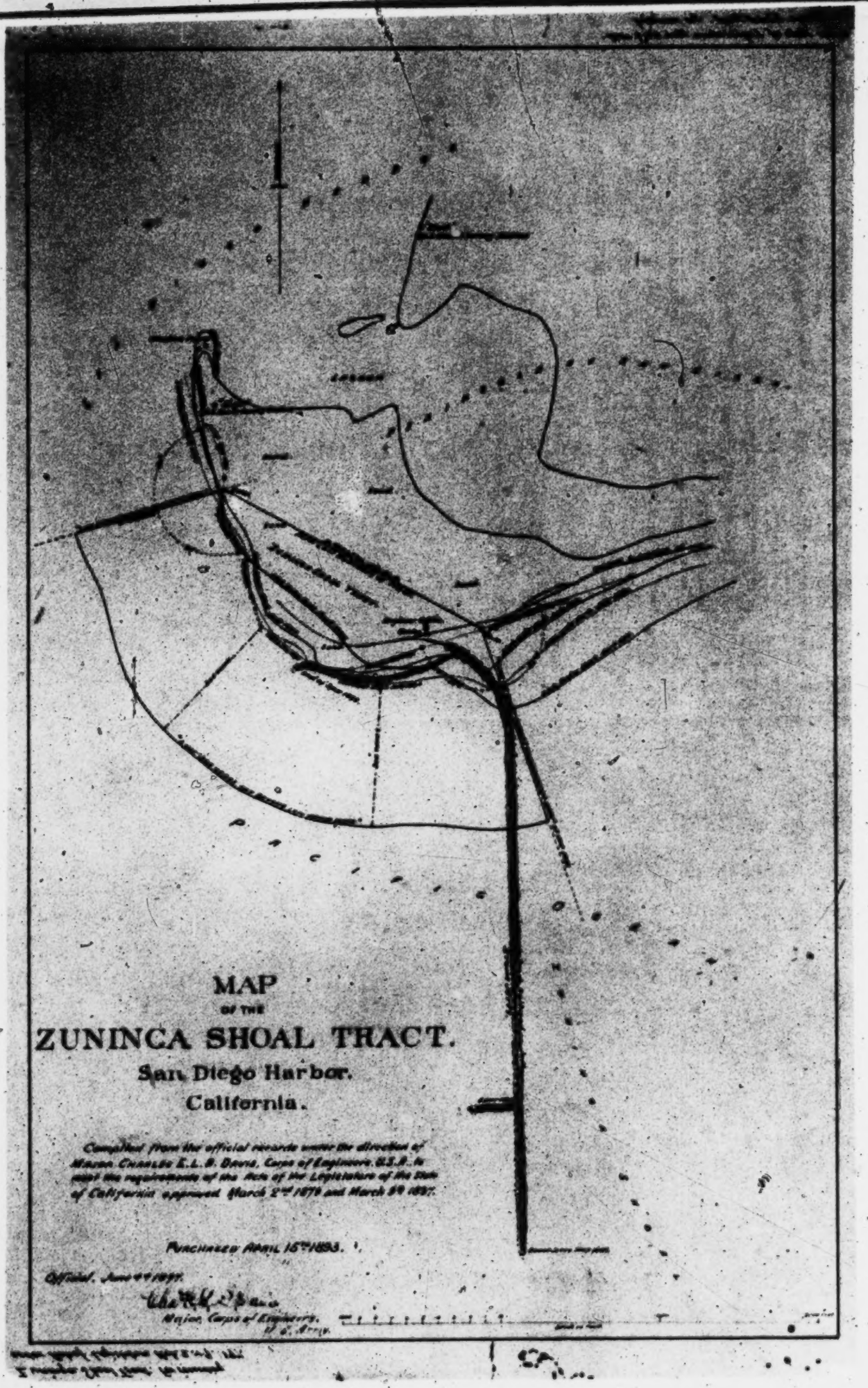
MAP
OF THE
ZUNINCA SHOAL TRACT.
San Diego Harbor.
California.
Compiled from the official records under the direction of
Major Charles E.L.B. Davis, Corps of Engineers, U.S.A. in
pursuance of the Acts of the Legislature of the State
of California approved March 2nd 1870 and March 29 1897.
PURCHASED APRIL 15th 1893.
Official. June 4th 1897.
Major, Corps of Engineers,
U.S. Army.

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The metes and bounds description contained on said map reads, in part, as follows:

> "Thence through Lobos Creek to the line of high-water on the Pacific Ocean; thence at right angles to said high-water line *to the point in the Pacific Ocean,* three hundred (300) yards out beyond low-water mark; thence in a northerly direction along a line three hundred (300) yards out beyond low-water mark *of the Pacific Ocean* and easterly along a line three hundred (300) yards out beyond low-water mark *in the Bay of San Francisco* to a point at right-angles to the line of high-water at its intersection with the easterly line of the Presidio Reservation . . . ."

A copy of said "Map of Presidio Military Reservation" so filed by the United States with the Surveyor General of California is as follows:

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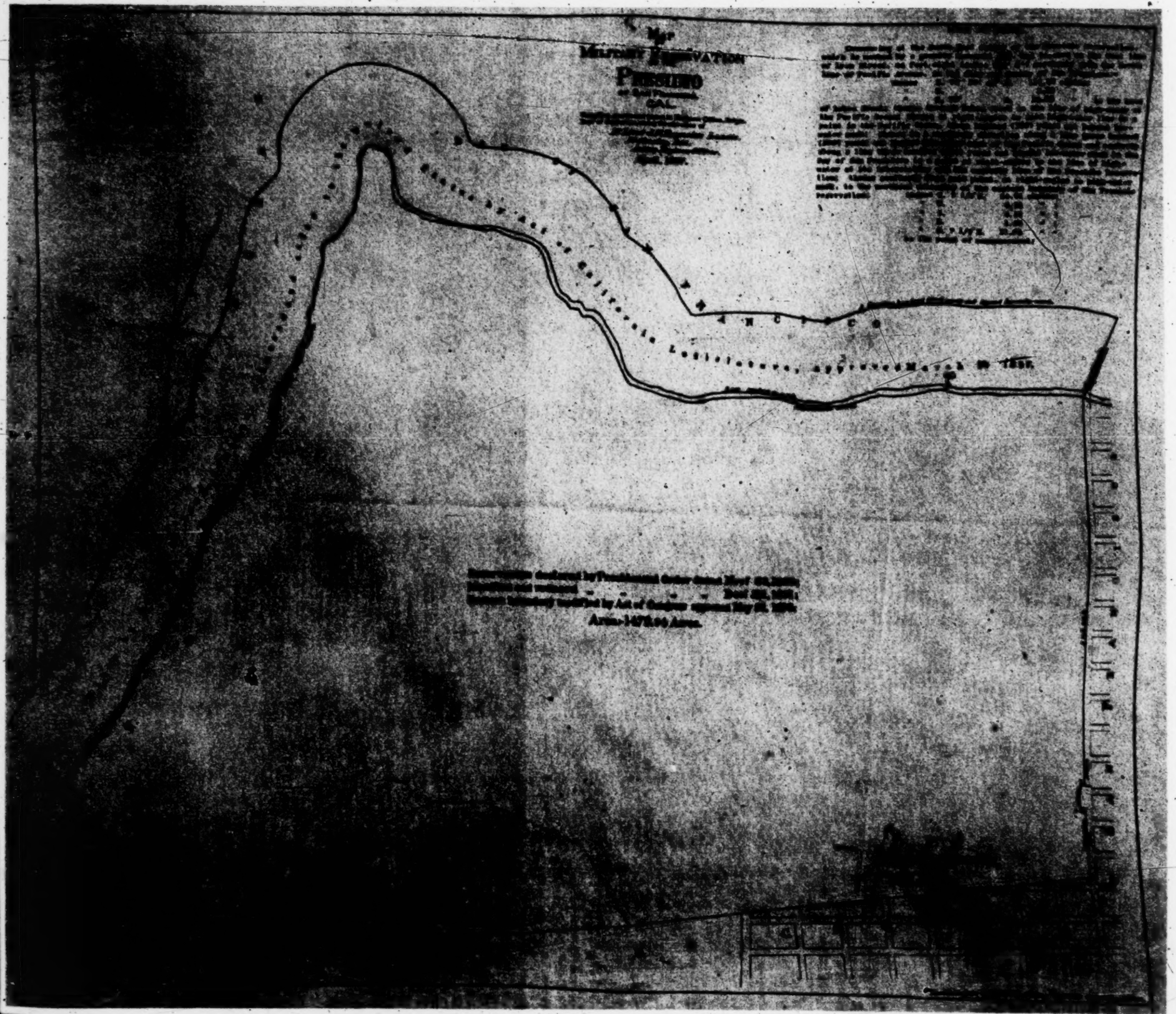
Map
MILITARY RESERVATION
PRESIDIO
SAN FRANCISCO
CAL.

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4. On June 4, 1897, the United States of America, by its Officer in Charge of Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF THE LIME POINT TRACT, HARBOR OF SAN FRANCISCO." Said map bears a legend reading:

> "Compiled from the official records, under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Act of the Legislature of the State of California, approved March 2nd 1897. Jurisdiction ceded by the State of California to the United States, by Act of Legislature approved April 16th, 1859, over this Tract and 'over all the contiguous shores, flats and waters within five hundred (500) yards from low water mark.'"

Said map depicts a strip of submerged land 500 yards wide extending from a point on the shore of the Pacific Ocean approximately ¾ of a mile northerly to Point Bonita (the northern exterior headland of the Straits of the Golden Gate), with said 500-yard strip running southerly a distance of approximately ¾ of a mile along the coast of the Pacific Ocean to Point Bonita; then turning into the Straits of the Golden Gate and running northeast and around said Point in a locality depicted thereon as "Golden Gate", then northeast and thence in an easterly direction to a locality bearing the legend "Bay of San Francisco"; thence running in a northerly direction to its termination.

A copy of said Map of Lime Point Tract, Harbor of San Francisco, California, filed with the Surveyor General of the State of California, as aforesaid, is set forth as follows:

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5. On January 24, 1906, the United States of America, through its Officer in Charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "DEADMAN'S ISLAND MILITARY RESERVATION, SAN PEDRO, CALIFORNIA." Said map bears the legend:

> "Compiled from official records to meet the requirements of the Acts of the Legislature of the State of California, approved March 2, 1897 and March 9, 1897."

Said map shows a small island approximately 200 yards in length and less than 150 yards in width, and also a rough circle completely surrounding said island extending out 300 yards therefrom, the exterior line of which bears a legend reading

> "Line 300 yards out beyond low-water mark."

Deadman's Island and said submerged lands surrounding it were situated in the Pacific Ocean and Bay of San Pedro.

A copy of the Map of Deadman's Island filed with the Surveyor General of the State of California, as aforesaid, is set forth as follows:

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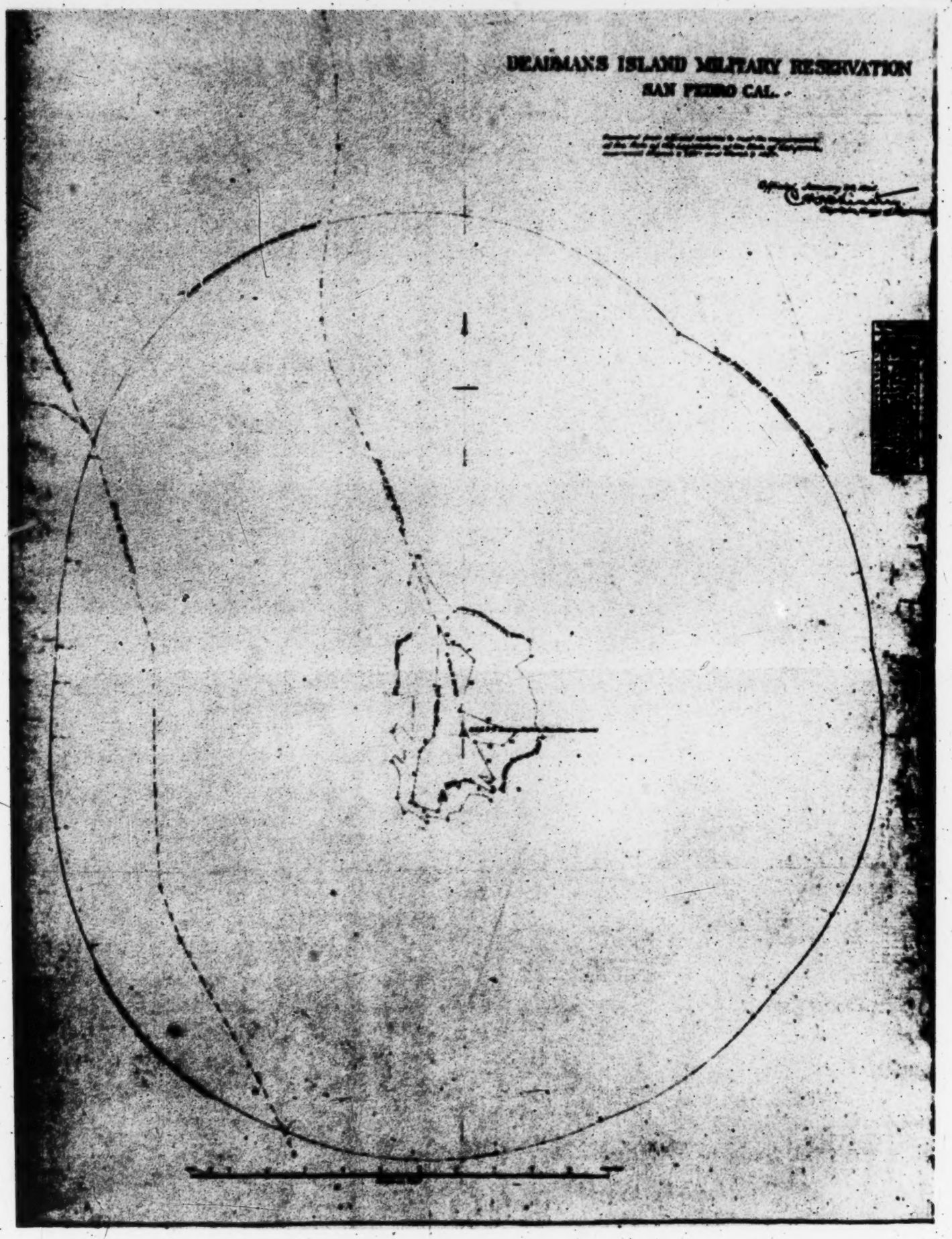
DEARMANS ISLAND MILITARY RESERVATION
SAN PEDRO CAL.

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Two pictures subjoined hereto correctly depict Deadman's Island as it existed prior to its destruction, as hereinafter alleged:

A 9.75 acre portion of the submerged lands included in the 300 yard strip around Deadman's Island Military Reservation, as shown on said map of January 24, 1906, was deeded in 1915 by the United States back to the City of Los Angeles in exchange for a grant from said City to the United States of other submerged lands lying adjacent to and southerly of the Military Reservation at San Pedro. Likewise a portion of said 300-yard strip of submerged lands was the subject of a further exchange with the City of Los Angeles in the years 1925-1927, for an area of 61.98 acres of submerged lands lying easterly of Deadman's Island; as hereinafter more particularly alleged.

The Secretary of War, on March 25, 1906, in rejecting an application for permit of Randolph H. Miner to construct a bulkhead and fill in certain submerged lands in the Pacific Ocean and Bay of San Pedro surrounding Deadman's Island and included within the aforesaid grant of March 9, 1897, stated that:

> "The Department duly received your letter of December 30th last . . . requesting permission to build a bulkhead or retaining wall in the outer harbor of San Pedro with the intention of filling up behind it and making solid ground . . ., said wall to enclose *the area granted to the United States by the Act of March 9, 1897* (Stats. of Calif. 1897, page 74) along with other water-covered lands which it is understood are to be filled in and reclaimed, thus destroying the natural waterfront and making an artificial one along *the side of the premises granted by the state.*
>
> "Replying thereto I beg to inform you that the submerged lands belonging to the United States

which it is proposed to reclaim cannot be disposed of without authority of Congress."

On May 11, 1906 the Chief of Engineers, U. S. Army, reported in writing to the Secretary of War concerning said application of Randolph H. Miner in part as follows: thereof bearing the legend:

> ". . . approval of which was denied on the ground that the fill contemplated behind the bulkhead would occupy *certain lands under water granted to the United States by the State of California.* . . . This action was taken after reference of the matter to the Judge Advocate General."

This grant of a strip of submerged lands around Deadman's Island was reported to Congress by the Secretary of War in 1924, House Document No. 349, 68th Congress, 1st Session, page 38, as follows:

> "By act of legislature, the State of California granted to the United States parcels of land extending from high water mark out to 300 yards beyond low water mark lying adjacent and contiguous to such lands of the United States, any such as lie upon tidal waters to be held, occupied or reserved for military purposes or defense lying adjacent and contiguous to any island the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense. The United States has claim to land of approximately 36 acres around Reservation Point and lying easterly of the probable 1000 foot channel. . . ."

6. On June 4, 1897, the United States of America, through its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General

of the State of California, a map entitled "MAP OF THE MILITARY RESERVATION AT SAN PEDRO, CALIFORNIA." Said map bears the legend:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards wide lying in the Pacific Ocean and Bay of San Pedro in front of the Military Reservation, with the exterior line thereof bearing the legend:

> "Line 300 yards out beyond low-water mark."

A copy of said map dated June 4, 1897, is set forth as follows:

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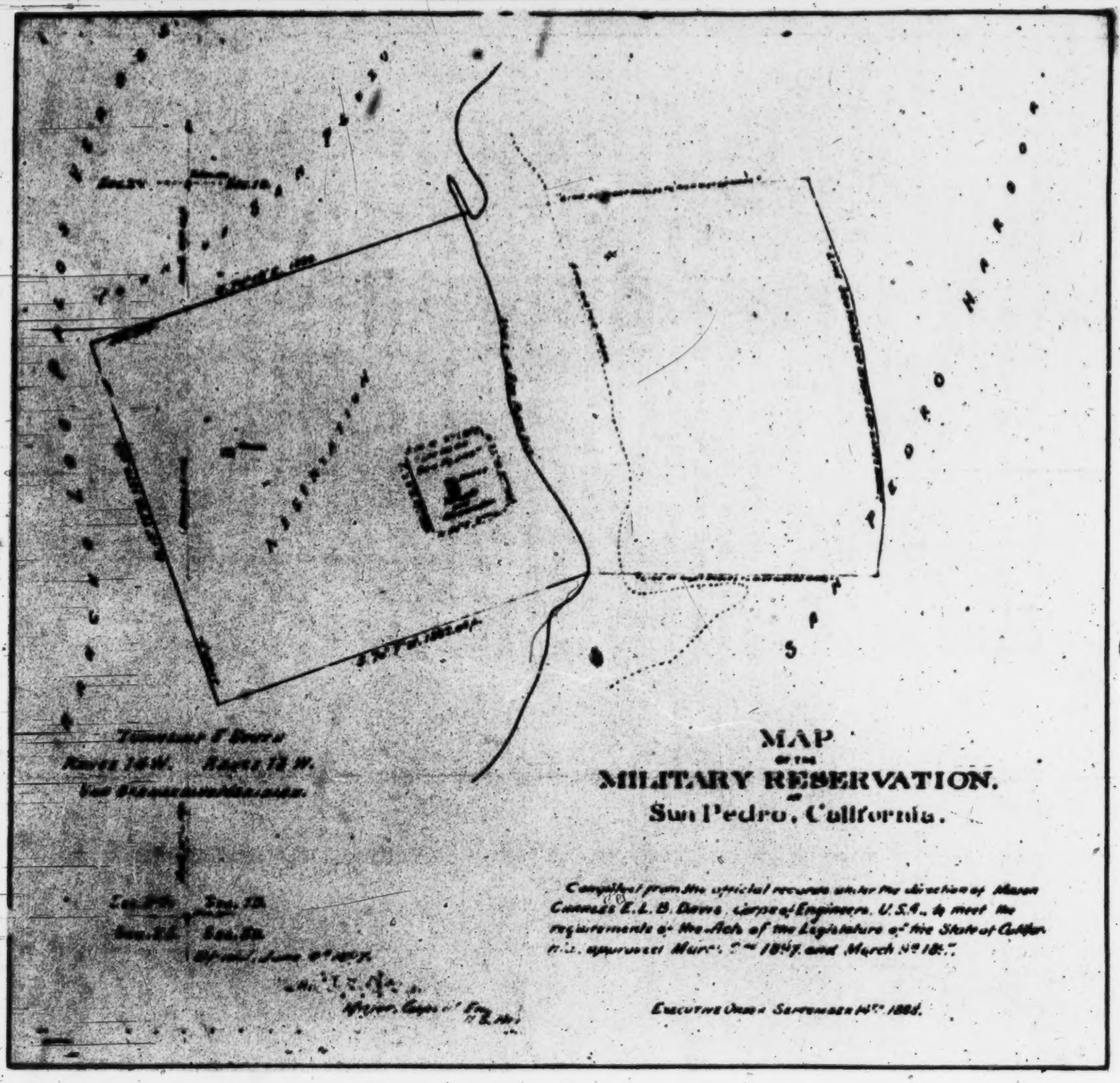
MAP
OF THE
MILITARY RESERVATION.
San Pedro, California.
Compiled from the official records under the direction of Mason
Connelly E. L. B. Davis, Corps of Engineers, U.S.A., to meet the
requirements of the Act of the Legislature of the State of Califor
nia, approved March 9th 1897, and March 9th 1899.
Executive Office Sacramento March 1898.

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The Secretary of War and the Judge Advocate General of the United States Army under date of September 25, 1933, prepared a certificate of the boundaries of Fort McArthur (Military Reservation at San Pedro) setting forth the metes and bounds of the boundary of said Reservation, attached to which was a map thereof, and filed the same for record in the office of the County Recorder of Los Angeles County, California as "Recorder's Filed Map 698-R". Said certificate reads in part as follows:

> "I hereby certify that Kyle Rucker, Colonel, Judge Advocate General's Department, who signed the foregoing certificate, was at the time of the signing thereof, the Acting The Judge Advocate General, United States Army, and as such was custodian of all deeds and papers pertaining to the title to all military reservations of the United States and that to his certification as such full faith and credit are, and ought to be given. It is hereby directed that, *pursuant to the provision of the Act of the Legislature of California, approved March 2, 1897 (Calif. Stats. 1897, p. 51), the metes and bounds description and boundary map referred to in the above certificate be filed* in the proper office of record in the county in which said reservation is located.
>
> In Testimony Whereof, I, George H. Dern, Secretary of War, have hereto caused the seal of the War Department to be affixed, and have subscribed my name at the City of Washington, this 2nd day of October, 1933.
>
> GEORGE H. DERN
> Secretary of War.
> (Seal)
>
> Recorded at the request of the United States of America, War Department . . . etc."

The map accompanying said certificate thus filed for record bears a legend reading:

> "NOTE: *This area ceded to United States by State of California by Act of Mar. 9, 1897,* (Cal. Stats. 1897, p. 74); the boundaries being a line along high water mark, *a line three hundred yards out below low water mark,* and lines at right angles to high water mark at the points where the boundaries of the adjacent lands of the United States touch high water mark."

A copy of said map of Fort McArthur accompanying said certificate of the Secretary of War is set forth as follows:

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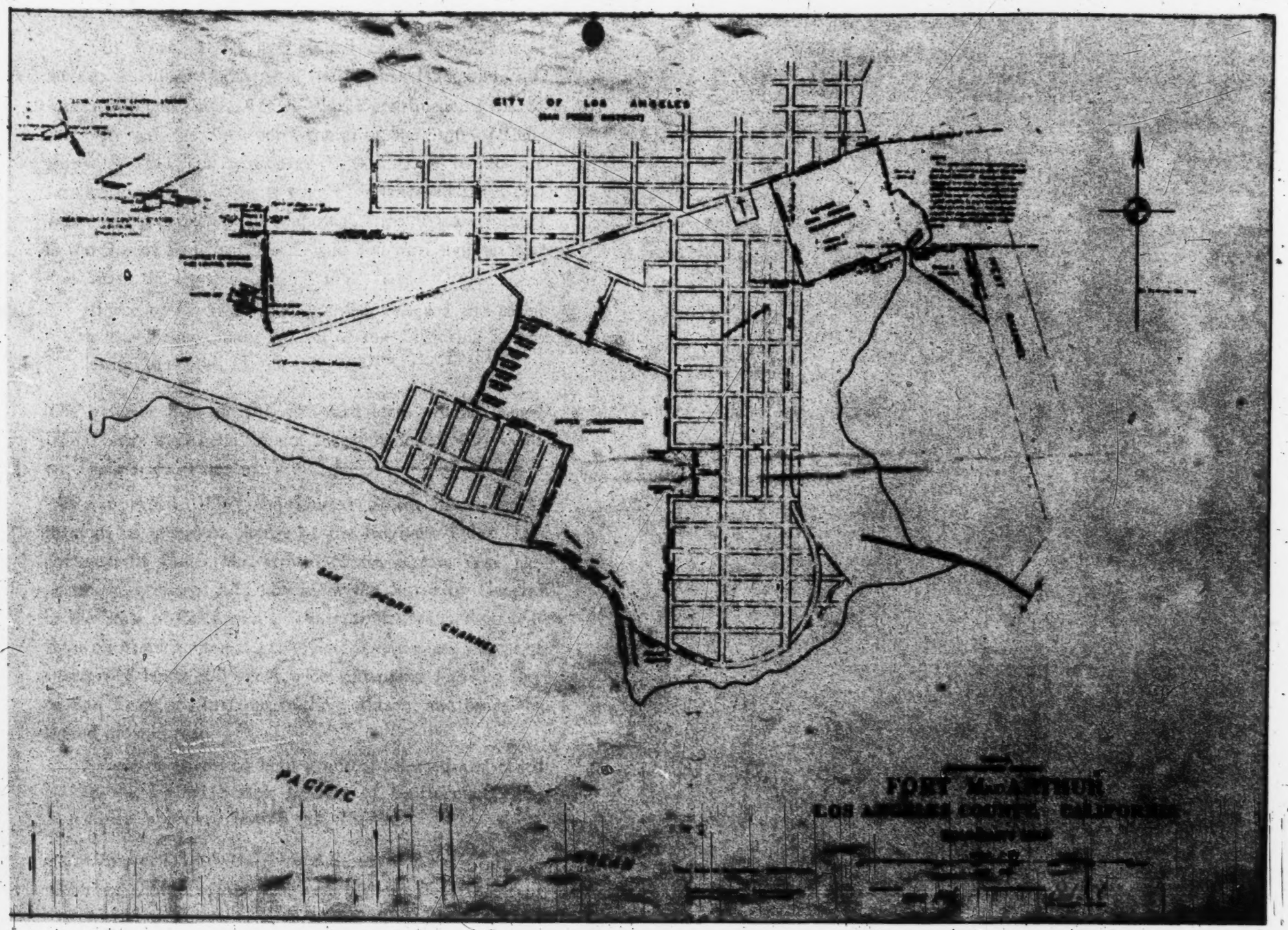
CITY OF LOS ANGELES
SAN PEDRO DISTRICT
SAN PEDRO CHANNEL
PACIFIC
FORT MacARTHUR

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7. In April, 1897, the United States of America, through its officer in charge of the Engineer Office in California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a "MAP OF MILITARY RESERVATION OF ANGEL ISLAND, CAL.," depicting a strip of submerged lands 300 yards wide completely surrounding Angel Island, located in the Bay of San Francisco. Said 300-yard strip on said map bears the legend

> "Piece or parcel of land granted, released and ceded to the United States by Act of the California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip around Angel Island bears the legend "A line three hundred (300) yards out beyond low-water mark."

8. In April, 1897, the United States of America, through its officer in charge of the Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF FORT MASON, CAL." Said map depicts a strip of submerged lands 300 yards wide, extending into the Bay of San Francisco in front of Fort Mason, and bears the legend on said map

> "Piece or parcel of land granted, released and ceded to the United States, by Act of California Legislature, approved March 9th, 1897."

9. In April, 1897, the United States of America, by its officer in charge of the Engineer Office, Department of

California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION AT BENICIA, CAL." Said map depicts a strip of submerged lands 300 yards in width lying in Suisun Bay and the Straits of Carquinez in front of the Benicia Military Reservation. Said 300-yard strip on said map bears the legend

> "Piece or parcel of land granted, released and ceded to the United States, by Act of California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip bears the legend on said map

> "A line three hundred yards out beyond low-water mark."

Said map also bears the legend reading in part as follows:

> "all that parcel of land bounded by a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right angles to high-water mark at the points where the adjacent lands of the United States touch high water mark (by Act of California Legislature, approved March 9th, 1897)."

10. In April, 1897, the United States of America, by its officer in charge of the Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF ALCATRAZ ISLAND, CAL." Said map depicts a strip of submerged lands 300 yards wide entirely surrounding Alca-

traz Island in the Bay of San Francisco, and thereon bears the legend reading:

> "Piece or parcel of land granted, released and ceded to the United States by Act of the California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip bears the legend:

> "A line three hundred (300) yards out beyond low-water mark."

Said map also bears the legend reading:

> "Also:—all that parcel of land bounded by a line along high-water mark and a line of three hundred (300) yards out beyond low-water mark . . . (by Act of California Legislature approved March 9, 1897)."

11. In May, 1897, the United States of America by its officer in charge of the Engineer's Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF MILITARY RESERVATION AT SAN DIEGO, CAL." Said map depicts a parcel of land extending 300 yards beyond low-water mark in the Bay of San Diego lying in front of said Military Reservation and bears a legend reading:

> "Piece or parcel of land granted, released and ceded to the United States, by Act of the California Legislature, approved March 9, 1897."

The exterior line of said parcel bears the legend on said map:

> "A line three hundred (300) yards out beyond low-water mark."

12. On June 26, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a map entitled "MAP OF RED ROCK OR MOLATE ISLAND, SAN FRANCISCO BAY, CAL." Said map bears the legend reading in part:

> ". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897, and March 9th, 1897."

Said map depicts a small island situated in the Bay of San Fransisco encircled by a line bearing the legend:

"300 yds. beyond low water line."

13. On June 4, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF THE CORONADO BEACH TRACT, SAN DIEGO HARBOR, CALIFORNIA." Said map bears a legend reading in part:

> ". . . To meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged lands 300 yards wide extending into the Bay of San Diego beyond the line of low-water mark adjacent to said Coronado Beach Tract, the exterior line of said strip bearing a legend:

"Line 300 yards out beyond low-water mark."

All submerged lands adjoining said "Coronado Beach Tract," depicted on said map of June 4, 1897, as well as adjoining tidelands, so granted to the United States, were the subject of a proposed exchange for a 32.8 acre parcel of submerged lands situated in the Pacific Ocean, initiated by the United States of America in the year 1941, as hereinafter more particularly alleged. In said proposed exchange, suggested by the United States in 1941, the United States recognized and asserted the reversionary title and interest of the State of California under said Act of March 9, 1897, in the event the United States no longer maintained and used said "Coronado Beach Tract" as and for a Military Reservation.

In the letter request of the War Department to officials of the State of California soliciting and requesting enactment by the California Legislature of authorization for the proposed exchange (hereinafter more particularly described), said War Department stated in writing, under date of May 27, 1941, that:

> "Reference is made to California Statutes . . . approved March 9, 1897, by which title to so-called tidelands and submerged lands adjacent to and contiguous to such lands of the United States as lie upon tidal waters, etc., and are held for military purposes, reverts to the State whenever the United States land is sold.
>
> "It is noted that the legal description of the military reservation identified as Parcel 3 [on the map transmitted with said War Department letter] defines the uplands area only, it being understood that

under the provisions of the Statute hereinabove mentioned, title to tidelands and submerged lands passes to the State upon sale of the reservation. However, in order to define the limits of an area on the ocean side equivalent to the area embraced within the total boundaries of the reservation on the Bay side, it was necessary to compute an area of combined tidelands and submerged lands based on the metes and bounds described in the statute hereinabove mentioned.

"The metes and bounds with computed areas are shown on the inclosed map. It is the intention and purpose of the United States to convey to the State all right, title, and interest it may now have in the military reservation, together with its adjacent and contiguous tidelands and submerged lands. . . ."

14. On June 26, 1897, the United States of America, by its officer in charge of Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a map entitled "MAP OF THE BROTHERS AND THE SISTERS, SAN FRANCISCO BAY, CAL." Said map bears the legend reading in part:

". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts two small islands lying between San Fransisco Bay and San Pablo Bay, each island being encircled by a line which bears the legend:

"300 yds. from l. w. mark."

15. A map bearing a legend:

"PLAT OF THE U. S. MILITARY RESERVATION AT MONTEREY."

was filed on behalf of the United States of America with the Surveyor General of the State of California, depicting a strip of submerged land 300 yards wide located in the Bay of Monterey lying in front of the Military Reservation of Monterey and bearing a legend:

"All that parcel of land bounded by a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right-angles to high-water mark at the points where the adjacent lands of the United States touch high-water mark (by Act of California Legislature approved March 9th, 1897)."

16. On June 26, 1897, a map entitled "MAP OF MARIN ISLANDS, SAN FRANCISCO BAY, CAL." was prepared and filed with the Surveyor General of the State of California by the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, bearing a legend reading in part:

". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897, and March 9th, 1897."

Said map depicts two small islands labeled "Marin Islands" lying in the San Francisco Bay, said islands being encircled by a line bearing a legend reading as follows:

"300 yds. beyond low water line."

17. On June 4, 1897, a map entitled "MAP OF YERBA BUENA ISLAND, HARBOR OF SAN FRANCISCO, CALIFORNIA" was prepared and filed with the Surveyor General of the State of California by the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department. Said map bears the legend reading in part:

> ". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards out beyond low-water mark encircling "Yerba Buena Island" in the San Francisco Bay. The exterior line of said 300 yard strip bears the legend:

> "Line 300 yards out beyond low-water mark."

On April 17, 1942, the United States of America filed a complaint in condemnation in the United States District Court for the Northern District of California, Southern Division, entitled "United States of America v. 380 Acres of tidelands and submerged lands, more or less, in the Bay of San Francisco, California, *et al.*," being No. 22164-W. The lands therein described as sought to be taken and condemned were alleged as being "tidelands and submerged lands known as Treasure Island", and were then more particularly described by metes and bounds, with an exception reading in said complaint as follows:

> "Excepting from said *grant* (*sic*) that portion of the lands above particularly described, lying northerly of Yerba Buena Island and adjacent thereto, *extend-*

ing from high water mark to 900 feet beyond low water mark, the latter portion so excepted being a part of the lands granted and ceded by the State of California to the United States of America by that certain act of the Legislature of the State of California entitled 'An Act relinquishing to the United States of America the title of this State to certain lands,' approved March 9, 1897."

The United States of America has thus at all times since March 9, 1897, claimed and asserted title under the grant from the State of California of portions of its submerged lands pursuant to said statute.

II.

In the year 1931 the State of California, by Act of its Legislature, at the request and solicitation of the United States of America, Navy Department, granted to the United States title to certain submerged lands along the coast of the Pacific Ocean westerly of North Island outside of the Bay of San Diego, as well as certain tidelands adjacent thereto, and also tidelands and submerged lands in the entrance to the Bay and in the Bay of San Diego. In this connection, defendant alleges that:

1. On September 24, 1930, the Commandant of the 11th Naval District, Navy Department, United States of America, prepared and forwarded to the Chief of Naval Operations a report on the necessity of the United States of America acquiring title from the State of California to tide and submerged lands along the shore of the Pacific Ocean adjacent to North Island in San Diego County, California, as well as the necessity for acquiring the State's tide and submerged lands adjacent to North Island

on the Bay side thereof in the Bay of San Diego. Said report contained a detailed statement of the history of the titles to North Island and to the tide and submerged lands surrounding North Island both in the Pacific Ocean and in the entrance to the Bay and in the Bay of San Diego. In stating the history of the title to North Island, said report reads in part as follows:

> "The island or peninsula of San Diego was a Mexican Grant made to Pedro Carillo on May 18, 1846 by Pio Pico, then Constitutional Governor of the Department of California. The so-called island or peninsula of San Diego included all of what is known as North Island, South Island (Coronado), the strand adjoining the above Islands and the strand adjoining South Island to the main land.
>
> "The State of California was admitted to the Union by Act of Congress on September 9, 1850, by which Act the United States accepted the Constitution of California as presented. That Constitution fixed the boundaries of the State of California. * * *
>
> [The report proceeds to state the facts of the proceedings under the Act of Congress of March 3, 1851, confirming the Mexican Grant to the successors of Carillo and the issuance of a United States Patent in confirmation thereof on June 11, 1869.]
>
> "The acquisition of North Island by the United States was under condemnation proceedings. Final order of the court was entered June 1, 1920, and The Coronado Beach Company, at that time owner, gave the Government a quit-

claim deed to North Island, which was dated December 30, 1921. . . .

"* * * * * * * *

"From the time of the Government's acquisition of North Island to February 15, 1928, the harbor lines as established by the War Department along the northerly and northwesterly sides of North Island consisted of a pier head line which was located, for a considerable portion of its length, beyond the limits of the peninsula of San Diego shown on the Patent Plat approved June 11, 1869, to a bulkhead which laid entirely within the limits of the peninsula of San Diego as shown on said Patent Plat. Therefore, as no filling could be done beyond the bulkhead line and no use could be made of the submerged lands between the bulkhead line and the pier head line, except for the erection of piers and similar structures, the question of ownership of the tidelands was not important to the Government. However, on February 15, 1928, the War Department modified the harbor lines along the northerly and northwesterly side of North Island and established a combined pier head and bulkhead line which for a part of its course lies beyond the limits of the peninsula of San Diego as shown on the Patent Plat approved June 11, 1869. Thus, there is a small triangular area of tideland between the existing combined pier head and bulkhead line to the Government's property line. This small triangular piece of tideland is the subject of basic letter and is shown on the photostat attached to enclosure D of basic letter. *It appears from the above that the title to this triangular piece of tideland has never been conveyed to the Federal Government nor to any mu-*

nicipality and therefore still lies with the State of California."

[The report then sets forth a description of the triangular piece of tideland above referred to.]

"4. In connection with the matter of tidelands adjacent to North Island there are other areas which should be given consideration, particularly the tidelands lying along the east shore of North Island in the Spanish Bight. It is desirable that the tidelands in Spanish Bight not already transferred to the City of Coronado should be ceded to the Government. The Legislature of the State of California, by an Act approved April 27, 1923 (California Statutes 1923, Chapter 49), conveying to the City of Coronado certain tidelands, situated in the Bay of San Diego, in the following language:

[giving the granting clause of said Statute, and then setting forth the boundaries of the City of Coronado as it was incorporated in the year 1890]

"From the above it appears that the boundaries of the City of Coronado extend to the low water mark and therefore that the tidelands conveyed by the State of California extend to the low water mark except where the pierhead line has been established by the Federal Government, in which case Coronado's title to tidelands extends to the said pierhead line. No pierhead line has ever been established in Spanish Bight nor is it probably that the Government will establish such a line, particularly south of the bridge which crosses the bight on the prolongation of Fourth Street, Coronado. . . . . *The Government*

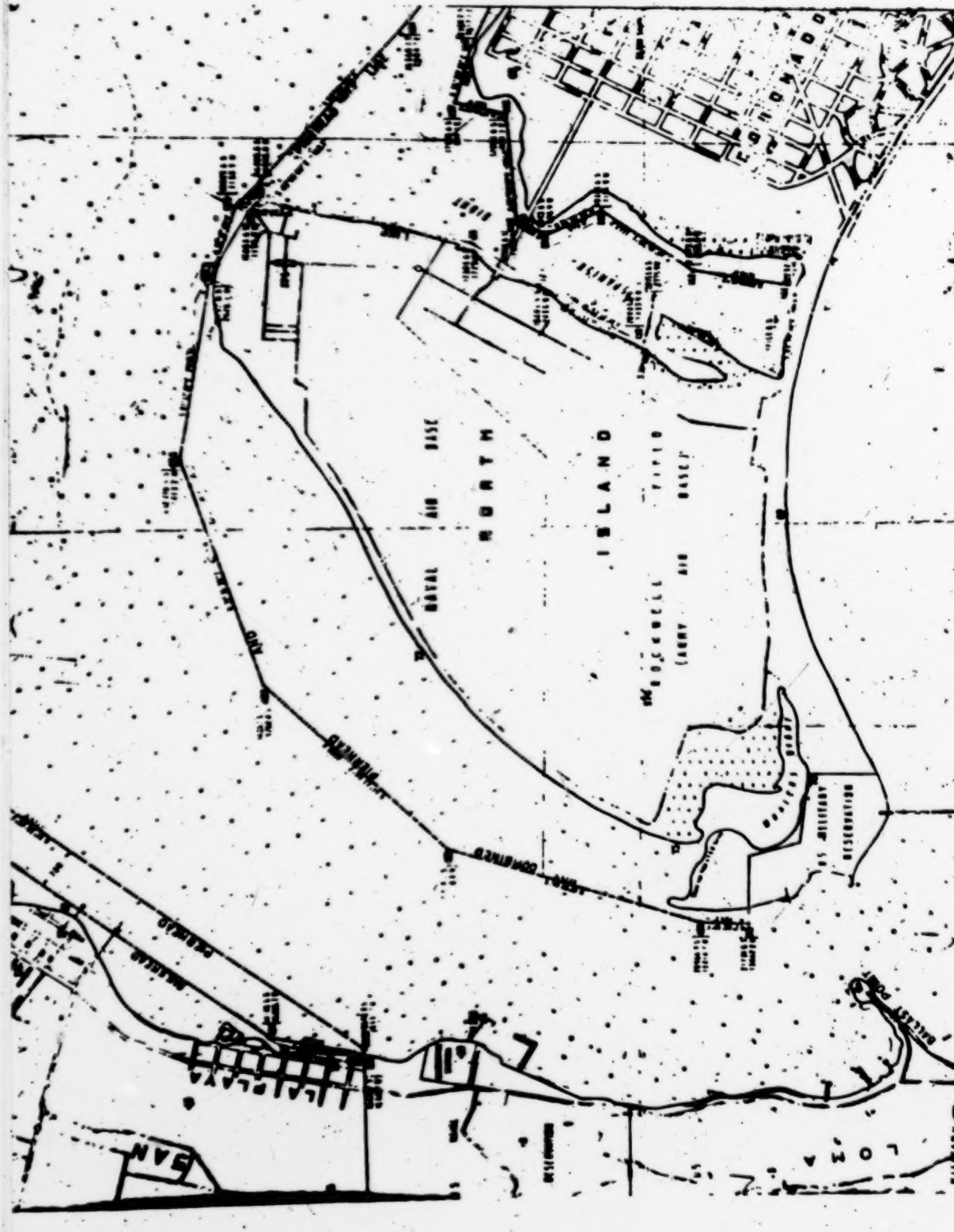
should then request the State to cede to it all the tidelands adjacent to North Island in Spanish Bight not already conveyed to the City of Coronado. The description of these lands is as follows:

> [setting forth the legal description. This legal description is contained in Section 1, subparagraph B of the 1931 Legislative grant hereinafter quoted.]

"5. There are still other tidelands adjacent to North Island to which the Government should secure title. *These are the tidelands along the Ocean front. At the present time title to these lands lies with the State and technically therefore the Government does not have control of the beach.* The description of these lands is as follows:

> [setting forth the description of tidelands *and submerged* lands extending out to the pierhead line in the Pacific Ocean *as the same may thereafter be established by the Federal Government.* Said description set forth in Paragraph 5 of said report is the same as the description in Section 1, subparagraph C, of the 1931 Legislative Grant from the State of California to the United States of America hereinafter quoted.]"

Attached to said report of September 24, 1930, as an exhibit, is a map of North Island showing the "newly combined pierhead and bulkhead line", showing the physical situation around North Island as described in said report. The Pacific Ocean adjoins North Island in the lower portion of the map. A copy of said map is set forth as follows:


NORTH
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2. The exact matters contained in the report of the Commandant of the 11th Naval District, dated September 24, 1930, as aforesaid, were presented by the United States of America to the Legislature of the State of California, with the request that title, in accordance with such recommendations, should be conveyed to the areas of tide and submerged lands mentioned in said report of September 24, 1930, aforesaid. Pursuant thereto, the Legislature enacted a statute approved May 11, 1931, being Chapter 293, Statutes of California 1931 (Stats. 1931, p. 707). The Statute reads as follows:

"AN ACT *authorizing the department of finance to convey by deed certain tidelands belonging to the State of California situate in the county of San Diego, State of California.*

"The people of the State of California do enact as follows:

"Section 1. The department of finance is hereby authorized and empowered to convey to the United States of America by quit claim deed or other instrument, upon such terms and conditions as shall apear in the judgment of the director of finance to be for the best interests of the State of California, *in and to all tidelands and submerged lands* (whether filled or unfilled), *held by said State by virtue of its sovereignty,* situated in the bay of San Diego, in Spanish bight in the bay of San Diego, *and in the Pacific Ocean,* in the county of San Diego, State of California, adjacent to North island and the strand connecting North Island with South Island Coronado, more particularly described as follows:

"(a) All tidelands and submerged lands situated along the north, northwesterly, and west-

erly side of North Island, lying between the line of the peninsula of San Diego, as shown on the plat accompanying the United States patent to the peninsula of San Diego, dated June 11, 1869, and the pierhead line in the bay of San Diego as the same has been or may hereafter be established by the federal government.

"(b) All tidelands and submerged lands situated in Spanish bight, in the bay of San Diego, adjacent to North island and the strand connecting North island with South Island Coronado, lying between the line of the peninsula of San Diego as shown on the plat accompanying United States patent to the peninsula of San Diego, dated June 11, 1869, and the low water mark in said Spanish bight and lying between the said line of the peninsula of San Diego and the pierhead line in said Spanish bight, as the same may hereafter be established by the federal government; save and except the tidelands and submerged lands in said Spanish bight conveyed to the city of Coronado, a municipal corporation in the county of San Diego, State of California, by an act of the legislature of the State of California approved April 27, 1923 (California statutes, 1923, chapter 49).

"(c) *All tidelands and submerged lands, situated in the Pacific Ocean, adjacent to North Island and the strand connecting North Island with South Island Coronado,* lying between the line of the peninsula of San Diego, as shown on the plat accompanying the United States patent to the peninsula of San Diego dated June 11, 1869, and the low water mark in said Pacific ocean *and lying between the said line of the peninsula of San Diego and the pierhead line in the said*

Pacific ocean as the same may hereafter be established by the federal government, and lying westerly of the prolongation of the line crossing the said strand in the position and direction particularly described as follows: * * *"

By said Statute, as requested by the United States, the Director of Finance was authorized to convey to the United States of America, among other things, *submerged lands lying in the Pacific Ocean outside of and beyond any bay or harbor.*

3. Thereafter, on August 27, 1931, the United States, through its Navy Department, wrote to the Executive of the Department of Finance, State of California, furnishing him with information with respect to the legislation set forth in the preceding paragraph (2) hereof, and with a copy of the report of September 24, 1930, from the Commandant of the 11th Naval District to the Chief of Naval Operations reporting on the status of the tide and submerged lands in question, as above quoted.

4. Thereafter, on November 6, 1931, the Commandant of the 11th Naval District wrote to the Department of Finance, State of California, and advised that the Secretary of the Navy had wired said Commandant regarding the status of the tide and submerged lands around North Island as affected by the 1931 legislation above mentioned, said wire from said Secretary of the Navy being set forth in said letter of November 6, 1931 and reading as follows:

"0305 YOUR LETTER JUNE TWENTY-THIRD ACT OF ASSEMBLY APPROVED BY GOVERNOR MAY ELEVENTH AUTHORIZES AND EMPOWERS DEPARTMENT OF FINANCE TO CONVEY TO UNITED STATES TIDE AND SUBMERGED LANDS OF

NORTH ISLAND ON SUCH TERMS AND CONDITIONS AS APPEARD IN HIS JUDGMENT TO BE FOR THE BEST INTERESTS OF THE STATE OF CALIFORNIA PERIOD ASCERTAIN AND REPORT TO NAVY DEPARTMENT AT EARLIEST PRACTICABLE DATE EXACT NATURE OF TERMS AND CONDITIONS DEMANDED IN ORDER THAT APPROPRIATE STEPS MAY BE TAKEN TO SECURE NECESSARY AUTHORIZING LEGISLATION FOR CONGRESS 1100"

Said Commandant then requested the Department of Finance to furnish him, as soon as practicable, with information requested above by the Secretary of the Navy.

5. In response to said Commandant's letter of November 6, 1931 aforesaid, the Division of State Lands of the State of California wrote said Commandant on November 28, 1931, and advised that title to those tide and submerged lands on North Island would be conveyed to the United States Government by the State of California without cash consideration subject to (i) the reservation contained in Article I, Section 25 of the California Constitution, reserving the right of the People to fish upon and from public lands of the state; and (ii) in the event North Island was no longer used for the purposes to which it is now devoted by the United States, the *title to said tide and submerged lands would then revert to the State of California.*

6. Thereafter, on October 7, 1932, said Commandant wrote the Department of Finance of the State of California and advised that authority was to be sought from the next session of Congress authorizing the United States to take advantage of the State's offer subject to the reservations outlined in

said letter of November 28, 1931. Said Commandant there further stated in part as follows:

> "The tide and submerged lands mentioned are very desirable for governmental use in connection with Army and Navy reservations on North Island and it is contemplated to take advantage of the State's offer as soon as authority can be obtained from the Congress to accept said lands on behalf of the United States. It is hoped that such authority may be obtained from the next session of Congress."

7. On March 9, 1934 the said Commandant wrote the Department of Finance of the State of California and advised that he was in receipt of a letter from the Secretary of the Navy dated March 2, 1934, stating the view of the Judge Advocate General of the Navy that acceptance of the tide and submerged lands as authorized by the California Legislature in said 1931 legislation, may legally be effected without the necessity of any further legislation from Congress. Said Commandant *requested that a deed be executed* by the State of California subject to the reservations enumerated in said letter of November 28, 1931, conveying the tide and submerged lands adjacent and contiguous to that portion of North Island under the jurisdiction of the Navy Department, as set forth in said Act of the legislature approved May 11, 1931. Said Commandant stated that such deed should provide for acceptance by the Secretary of the Navy on behalf of the United States and be forwarded to the said Commandant for acceptance before recording in the land records of San Diego County.

8. On May 21, 1934 the Division of Lands of the State of California wrote said Commandant trans-

mitting a deed to the United States executed by the Director of the Department of Finance of the State of California, stating that said deed transferred

> "to the United States the land in Spanish Bight in the Bay of San Diego, *and in the Pacific Ocean,* in the County of San Diego, State of California, described in Chapter 293, Statutes of California, 1931."

9. On June 5, 1934 said Commandant wrote the Department of Finance of the State of California and acknowledged receipt of said deed transmitted on May 21, 1934, as aforesaid, and advised that the deed had been referred to the United States Attorney at Los Angeles

> "*for investigation as to sufficiency of title,* after which said deed would be forwarded to the Navy Department in Washington."

10. On February 11, 1935, the United States Attorney at Los Angeles wrote the Director of Finance of the State of California stating that said deed dated May 21, 1934 had been delivered to his office for review and then said in part:

> "The Attorney General, in discussing this matter in correspondence, has said in part:
>
> > 'In a similar case where land was to be acquired from the State of New Jersey, the Attorney General approved the title on the certificate of the Land Commissioner, who relatively holds the same position as the Director of Finance of the State of California, that such lands had not been otherwise disposed of. It ought not to be a difficult matter to secure such a certificate in the present instance.'

"We will be pleased to receive from you some sort of certificate which you can prepare, so that we may formally pass the matter.

"The attorney general has called our attention to a statement in a letter to him from the Secretary of the Navy in which the Secretary has said: 'They [lands in question] constitute part of the area the title to which was transferred from the State of California to the City of San Diego by the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1357).'

'In reading the Act of May 1, 1911, at page 1357 of the statutes of that year, we find that certain lands passed to the City of San Diego under certain conditions set forth in said Act. I am wondering if it will be necessary to obtain a quitclaim deed from the City of San Diego."

The United States Attorney asked for information with respect to the possible title of the City of San Diego.

11. Said inquiry from the United States Attorney with respect to the legislative grants to the City of San Diego and the legislative grants to the United States authorized by the 1931 statute aforesaid, were reviewed by the Department of Finance with the City Attorney of the City of San Diego. It having been found that there was no conflict between said statutes, a certificate was prepared by the Division of State Lands of the Department of Finance of the State of California certifying that, other than the United States of America under said deed of May 21, 1934, no person or municipality ever acquired title to said lands from the State of California. Said certificate was forwarded on March 25, 1935 to the United States Attorney at Los Angeles.

12. On June 25, 1935 said Commandant wrote the Department of Finance of California and advised, among other things, that the deed dated May 21, 1934 had theretofore been referred to the United States Attorney at Los Angeles for investigation as to the sufficiency of the title and then stated that:

> "The Commandant has received a letter from the Secretary of the Navy, dated June 3, 1935, instructing him to have the deed recorded in the land records of San Diego, California, and also to inform the Department of Finance *of the Navy Department's acceptance of the deed.* Accordingly, the deed was recorded at 4 p. m. on June 12, 1935, in Book 409 at page 225 of the official records of San Diego County, California, and the Department of Finance is hereby informed of the Navy Department's acceptance of the deed."

13. Said deed dated May 21, 1934 from the State of California to the United States of America executed pursuant to said Act of May 11, 1931, recited among other things that the Department of Finance was authorized to convey to the United States of America, under said statute:

> "title in and to all tide and submerged lands (whether filled or unfilled) *held by said state by virtue of its sovereignty,* situate in the Bay of San Diego, in the Spanish Bight in the Bay of San Diego *and in the Pacific Ocean,* in the County of San Diego, State of California, adjacent to North Island and the strand connecting North Island with South Island Coronado, which said lands are hereinafter more particularly described. . . ."

and in sub-paragraph (c) of the granting clause of said deed dated May 21, 1934 the following parcel of land is there particularly described as follows:

> "(c) All tide *and submerged lands, situate in the Pacific Ocean,* adjacent to North Island and the strand connecting North Island with South Island, Coronado, lying between the line of the Peninsula of San Diego as shown on the plat accompanying the United States Patent of the Peninsula of San Diego dated June 11, 1869, *and the low water mark in said Pacific Ocean and lying between the said line of the Peninsula of San Diego and the pierhead line in the said Pacific Ocean as the same hereafter be established by the federal government,* and lying westerly of the prolongation of the line", etc.

Said deed contained two reservations, the second of which provided for a reverter of the title of the lands therein described to the State of California, said condition reading as follows:

> "2. In the event North Island . . . is no longer used by the United States of America for the purposes to which it is now devoted, the title to the hereinbefore described lands shall immediately revert to the State of California."

III.

In conformity with the policy of the United States Lighthouse Board, established by Congress to acquire title to sites for lighthouses, beacons and other aids to navigation, the Legislature of the State of California enacted a statute approved March 26, 1874. (Stats. 1873-1874, p. 621), providing for the conveyance to the United States of title to land, in tracts not exceeding ten acres each, be-

longing to the State of California and covered by navigable waters anywhere within the limits of the State for lighthouse, beacon or other aid to navigation sites and likewise ceding jurisdiction to the United States over such granted sites.

Said statute approved March 26, 1874, by the California Legislature provides, in Section 1 thereof, as follows:

> "Section 1. Whenever the United States desire to acquire title to land belonging to the State, and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same; *provided,* no single tract shall contain more than ten acres, and that the State shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the State, may be executed by the proper officers thereof, upon any person or persons amenable to the same, within the limits of land so ceded, in like manner and to like effect as if this Act had never been passed."

In 1907, the Legislature of the State of California enacted a statute approved March 18, 1907 (Stats. 1907, p. 581), adding a new section to the California Political Code, being Section 35, providing for the conveyance to the United States of any tract of land not exceeding ten acres "belonging to the State and covered by navigable waters" for the site of a lighthouse, beacon or other aid

to navigation. Said Code Section provided that the United States should also have jurisdiction over any such conveyed tract.

The said Act approved March 26, 1874, was repealed by the 1937 Legislature, and said Section was reenacted by the Legislature in 1937 as a part of the California Harbor and Navigations Code, Section 10,000.

In the year 1943, said Section 35 of the Political Code was repealed and was reenacted as a part of the California Public Resources Code, Section 8301.

The United States, through its Treasury Department and Light-house Board, established by Act of Congress, carried on an active program about the year 1870 and thereafter, in soliciting the several states and obtaining from such states the passage of legislative enactments granting submerged lands, ceding jurisdiction thereover, and providing for the United States to obtain title to lands for lighthouse sites in the respective states. In the Annual Report of The United States Light-house Board to the Secretary of the Treasury, dated September 25, 1871 (Ex. Doc. No. 1507, 42nd Congress, 2nd Session (1872), page 505), it is reported as follows:

> "A circular letter from the Light-house Board of July 11, 1870, called for the names of such States in this district as had not passed, first, a general law ceding jurisdiction over land purchased by the United States from time to time for public uses; and, second, a general law providing for the acquirement of land by the United States in cases of disagreement with the owners. Letters were addressed to the secretaries of state of New Jersey, Vermont, Connecticut, Rhode Island, and New York, inquiring if these laws had been passed, and it was subsequently

learned that none of these States had passed such general laws, the custom being uniform to pass special acts for each case, where land was required. Subsequently *letters were addressed to the governors of Rhode Island, Connecticut, New Jersey, and New York asking the passage of these general laws*, and *the Engineer of the district personally urged their passage at the capitals of the States named*. Rhode Island passed the general law, and in addition a special act, *ceding the State's right over certain points in the navigable waters of the State*. New York adhered to its former custom, and only passed a special act to cover certain sites named in the acts, and limiting the quantity of land. It is not known if the other States in the districts have passed any acts. The passage of these acts by the States of New York and Rhode Island was delayed until late in the session of their legislatures, and the works appropriated for in the act of Congress of July 15, 1870, dependent upon the passage of these laws ceding jurisdiction, were consequently delayed until very near the close of the last fiscal year."

IV.

In the year 1941 the United States planned the construction of a national defense project on the Silver Strand south of Coronado and desired to locate such project on the ocean side of the Silver Strand and extending into the Pacific Ocean opposite its Military Reservation known as "Coronado Beach" hereinabove referred to. A request was thereupon made by the United States for a legislative grant of such tide and submerged lands by the State. In this connection defendant alleges:

1. In the spring of 1941 the United States War Department, Engineer's Office at Los Angeles pro-

posed an exchange between the United States and the State of California of the lands known as "United States Military Reservation, Coronado Beach" on the Strand lying between San Diego Bay and the Pacific Ocean, plus the area of submerged lands granted to the United States under the Act of March 9, 1897, pursuant to the map filed with the Surveyor General of the State of California, as hereinabove alleged; and that the State of California, through legislative action, grant to the United States an area of 32.8 acres of submerged lands lying in the Pacific Ocean on the oceanward side of said Coronado Beach Military Reservation.

2. On May 27, 1941 the United States of America, through its War Department, Engineer's Office, wrote to the State Lands Commission of the State of California requesting legislation permitting the exchange of lands by the State of California granting to the United States said 32.8 acre parcel of submerged lands in the Pacific Ocean, transmitted with said letter a map prepared by said War Department showing the location of the three parcels of land to be affected by such exchange and showing said 32.8 acre parcel to be conveyed to the United States as lying in the Pacific Ocean. Said letter stated in part that:

> "There is planned the construction of a national defense project on Silver Strand south of Coronado in San Diego County. It has been found feasible to locate this project on the ocean side of Silver Strand opposite the present Military Reservation known as 'Coronado Beach.'
>
> ". . . A tentative agreement has been reached in which the exchange of land can be

effected by and between the United States and the State of California (represented by the State Lands Commission and the State Parks Commission), which would give to the Government title to that land needed for this project, such title to cover lands adjacent to and contiguous to other state-owned land.

"This proposed plan is for the United States to convey to the State of California all property contained in the military reservation known as 'Coronado Beach' *in exchange for an equivalent area of state land on the ocean side of Silver Strand opposite said military reservation.*

"Reference is made to California Statutes . . . approved March 9, 1897, by which title to so-called tide and submerged lands adjacent to and contiguous to such lands of the United States as lie upon tidal waters, etc., and held for military purposes, reverts to the state whenever the United States' land is sold.

"It is noted that the legal description [shown on the map transmitted with said letter] of the military reservation identified as Parcel 3, defines an upland area only, *it being understood that under the provisions of the statute hereinabove mentioned title to tide and submerged lands passes to the state upon sale of the reservation.* However, in order to define the limits of an area on the ocean side equivalent to the area embraced within the total boundaries of the reservation on the Bay side, it was necessary to compute an area of combined tide lands and submerged lands based on the metes and bounds description in the statute hereinabove mentioned.

"The metes and bounds with computed areas are shown on the inclosed map and it is the

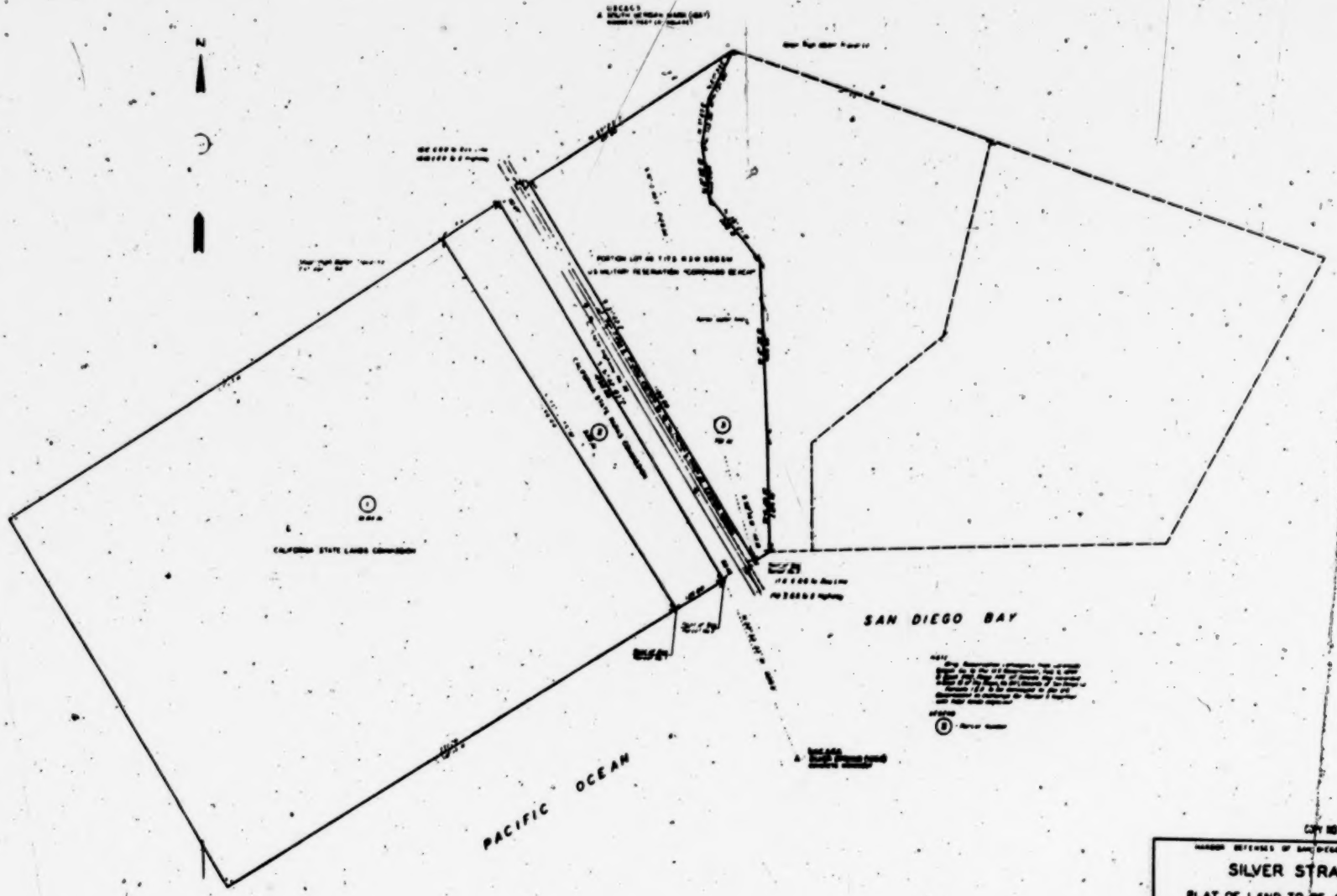
intention and purpose of the United States to convey to the state all right, title and interest it may now have in the military reservation, together with its adjacent and contiguous tidelands and submerged lands . . .

"Conveyance of Government land is made only by authority higher than this office, and request for such authority has been made and should be forthcoming soon. *It is also understood that conveyance of state land is made only by an Act of the State Legislature.*

"If this proposed plan is agreeable to you, *it is requested that same be approved and the necessary steps be taken to have the plan authorized by the Legislature, if possible, at its present session . . .*"

Said letter also requested that "pending final acquisition of state-owned land by the Government" permission be granted by the State to the United States of America to use and occupy the land for the same purposes as thereinabove in said letter mentioned.

A copy of the map prepared by the said War Department, accompanying said letter of May 27, 1941, depicting the 32.8 acre tract (Parcel 1 thereon) as lying entirely in the Pacific Ocean is set forth as follows:



SILVER STRAND

PLAT OF LAND TO BE ACQUIRED

3. Pursuant to said request the Legislature of the State of California enacted a statute approved July 19, 1941 (Stats 1941, p. 3090) providing as follows:

"AN ACT *authorizing the State Lands Commission to transfer by deed or other instrument certain tidelands and submerged lands belonging to the State of California situate in or adjacent to the County of San Diego, State of California.*

"The people of the State of California do enact as follows:

"Section 1. The State Lands Commission is hereby authorized and empowered to transfer by deed to the United States of America all or a portion of those tidelands and submerged lands of the State of California lying southwesterly of that certain military reservation, known as 'Coronado Beach,' which reservation is a portion of Lot 40, T. 17 S., R. 3 W., S. B. B. & M., as described in deed dated February 9, 1897, recorded in Book 262 of Deeds, page 145, records of County of San Diego, and map of which is recorded in Book 18 of Maps, No. 837, Records of County of San Diego, upon such terms and conditions as may appear to the State Lands Commission to be in the public interest.

"Sec. 2. The State Lands Commission is likewise authorized and empowered to exchange all or a portion of the lands described in Section 1 hereof for other similar lands of the United States of America, upon such terms and conditions as may appear to the State Lands Commission to be in the public interest.

"Sec. 3. All such deeds or other instruments necessary to pass title to the United States Government shall be in the name and by the authority of the people of the State of California, and upon receipt of a resolution of the State Lands Commission approving such conveyance or other instrument, shall be executed by the Governor, countersigned by the Secretary of State, sealed with the great seal of the State, and delivered to an authorized agent of the United States of America. The Governor is likewise empowered to accept for and in behalf of the State of California a deed or other instrument transferring tidelands and submerged lands from the United States of America upon receipt of a resolution of the State Lands Commission that the requirements herein contained have been satisfied.".

4. Pursuant to request of the United States for temporary use of said 32.8 acre parcel, pending the effective date of said legislative enactment, the State Lands Commission on July 25, 1941 granted authority for the issuance of an easement to the United States covering said property, and by letter dated July 30, 1941, addressed to District Engineer, United States War Department, at Los Angeles, advised the United States thereof. On August 5, 1941 the State Land Commission forwarded a proposed written easement covering said lands.

On August 22, 1941 the District Engineer of the War Department at Los Angeles wrote to the State Lands Commission, acknowledged receipt of the pro-

posed form of easement, and advised that "owing to the time element higher authority has decided to forego for the present making this exchange. It has been decided to construct this project on the Military Reservation located on the Bay Side of Silver Strand."

V.

By Act of August 5, 1886, Congress appropriated $600,000 for the improvement of the bar separating the Pacific Ocean from Humboldt Bay, California, and provided that none of the money thereby appropriated should be expended until the United States had obtained a title, free of expense, to the South Spit at the entrance of Humboldt Bay. Approximately 24.25 acres of tide and submerged lands lying in the Pacific Ocean at the entrance to Humboldt Bay owned by the State of California were thus required by the Act of Congress to be conveyed to the United States. The War Department requested the State of California to convey said tide and submerged lands situated in the Pacific Ocean at the entrance to Humboldt Bay in order to construct a breakwater and otherwise make improvements to the entrance to Humboldt Bay.

1. Pursuant to the request of the War Department, the Legislature of the State of California enacted a statute approved March 9, 1887 (Stats. 1887, p. 59) thereby granting to the United States an area of 24.25 acres of tide and submerged lands covered by the navigable waters of the Pacific Ocean at the entrance of Humboldt Bay adjoining said South Spit.

2. It was shortly thereafter determined that the description contained in the Act of the Legislature of March 9, 1887, was defective to convey to the United States title

to the 24.25 acre tract. The Chief of Engineers so reported to the Congress (1887 Annual Report, Chief of Engineers, U. S. Army, Part 3, pp. 2447-48) saying that:

> "During September last I was notified that an arrangement had been made with the owners by those interested in the work, and requested to define by metes and bounds the tracts which would be necessary for our purpose. An assistant was accordingly sent to Humboldt Bay, who, having been appointed a deputy United States Surveyor, made careful plats, connected with the land-office surveys of the land required above high water mark and the tide-lands adjoining *the title to which was vested in the State of California.* . . .
>
> "Only during the past week was I furnished with an abstract of title completed to date, which has been submitted to the district attorney for examination, who, satisfied with the title, will prepare a form of deed for the approval of the Attorney-General.
>
> "At the last session of the State legislature an act was passed with the intention of conveying to the United States a title to the tide-lands as described in the plat of survey by metes and bounds furnished from this office. By an unfortunate clerical error this description by metes and bounds was erroneously copied in the law and the patent, so that it does not describe any tract of land whatever, and effects, it is believed, no conveyance.
>
> "Since this discovery a proposition has been made that an application to the State for this tide land be made by some citizen who, on securing title, will reconvey to the United States; but the district attorney seems of the opinion that in view of the obvious intention of the legislature to dispose of the land in question no sufficient title to it could be obtained by private parties in advance of further legislative action.

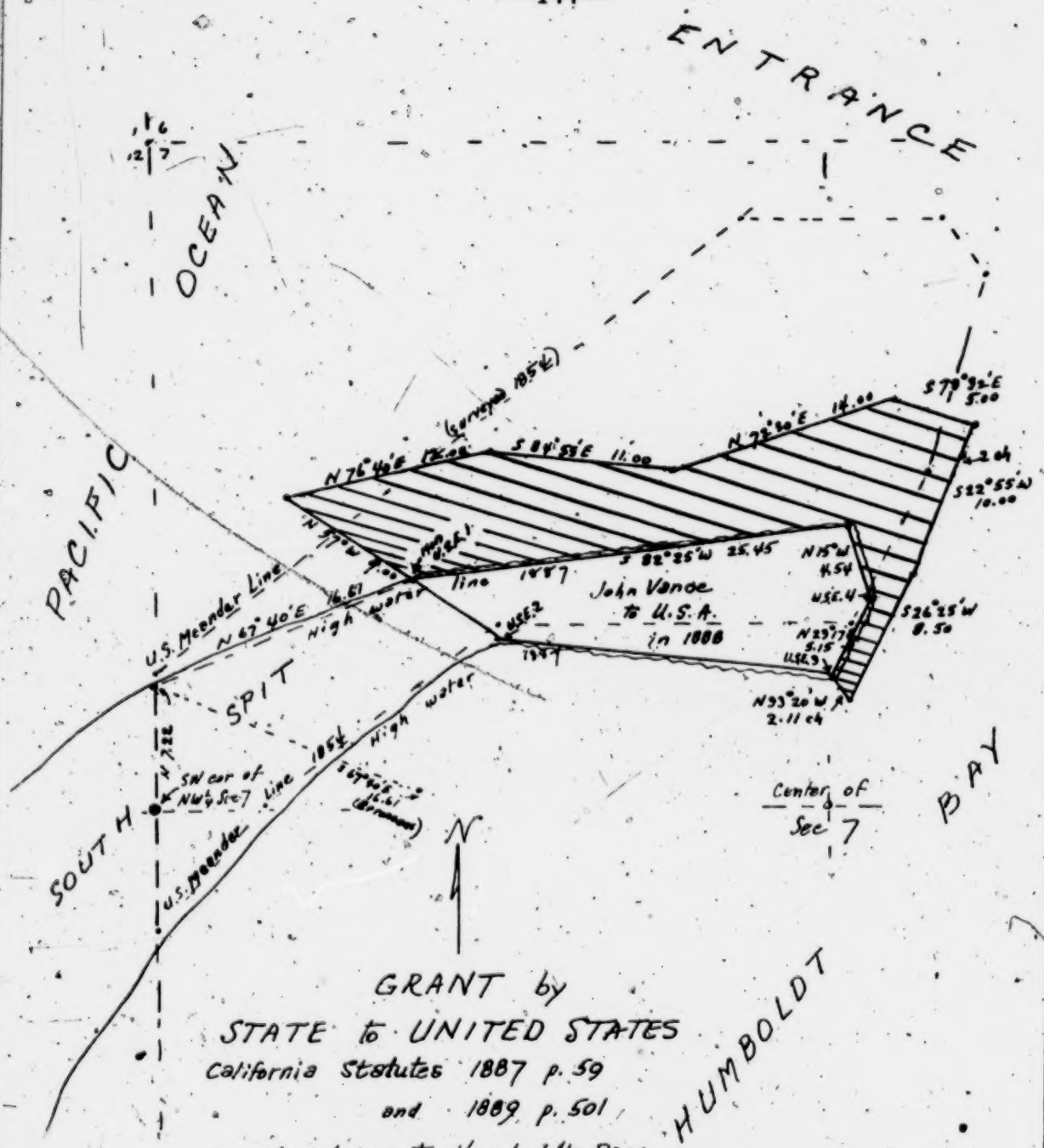
"If this be the correct opinion there seems no way in which the requirements of the act of August 5, 1886, for a clear title as preliminary to any expenditure can be satisfied until the next session of the State legislature has rectified the error of the existing law."

3. Pursuant to further requests from the War Department, the Legislature of the State of California enacted another statute, approved March 15, 1889 (Stats. 1889, p. 201), thereby granting said 24.25 acre tract of tide and submerged lands in the Pacific Ocean at the entrance of Humboldt Bay, for the purpose of enabling the United States to construct such breakwater and improve the entrance to Humboldt Bay. Said statute contained a corrected description covering the tract of tide and submerged lands thus requested by the United States.

4. Pursuant to said Act of the Legislature, approved March 15, 1889, as aforesaid, the United States Attorney General rendered his opinion that the United States had thereby acquired title to the land required on and adjacent to the South Spit in accordance with the Act of Congress of August 5, 1886. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 4, p. 2490.)

5. Thereafter the War Department caused the proposed breakwater to be constructed into the Pacific Ocean extending northwesterly several thousand feet from the shore line of the Pacific Ocean and thereby went into possession of the lands thus conveyed by the State of California to the United States at the entrance to Humboldt Bay, as aforesaid. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 1, pp. 351-352.)

6. A diagram depicting said 24.25 acre tract of tidelands and submerged lands thus granted by the State of California to the United States is set forth as follows:



GRANT by
STATE to UNITED STATES
California Statutes 1887 p. 59
and 1889 p. 501
at entrance to Humboldt Bay
Sec. 7. T. 4 N. R. 1 W. Humboldt Meridian.

Scale 600 ft = 1 inch
(Distances given in chains)

VI.

In the year of 1941 the legislature of the State of California, pursuant to the request and solicitation of the United States through its Lighthouse Service, Department of Commerce, granted to the United States an easement for lighthouse purposes over certain filled tidelands in the Pacific Ocean in Ventura County, California, adjacent to and seaward of the United States Coastguard Reservation on which is located Point Hueneme Lighthouse. In this connection defendant alleges that:

1. On June 16, 1939 the Division of State Lands, Department of Finance, State of California, received a communication from the Department of Commerce, Lighthouse Service, relative to Point Hueneme Lighthouse Reservation, advising that instructions had been received from the Bureau of Lighthouses to

> "take up direct with the proper state officials the matter of obtaining authorization for the *deeding to the Government of any accreted lands fronting on said reservation.* The exact procedure to be followed in this case is not clearly understood by this office and information is requested as to the steps to be taken in order to have a bill introduced in the state legislature which would, if enacted, deed the accreted lands to the United States Government."

Pursant thereto the State Division of Lands placed said request for a legislative grant on its legislative file and presented the matter at the 1941 legislature of the State of California.

2. Pursuant to said request, the Legislature of the State of California enacted a statute approved May

19, 1941 (Stats. 1941, p. 1453), thereby granting an easement for lighthouse purposes to the United States of America over those certain filled tidelands adjacent to and seaward of the United States Coastguard Reservation on which is located said Point Hueneme Lighthouse, within an area bounded as follows:

> "On the North, that portion of the ordinary high water mark of the Pacific Ocean coincident with the South boundary of the said United States Coastguard Reservation; on the South, the day to day line of ordinary high water mark of the Pacific Ocean; on the West," etc.

VII.

Pursuant to request of parties acting under contract with the United States to construct improvements for the United States, the State of California has granted to such contractors for and on behalf of the United States easements and licenses to use tide and submerged lands in the Pacific Ocean owned by the State of California. In this connection, defendant alleges:

1. Columbia Construction Company easement:

(a) In the year 1941, Columbia Construction Company, a corporation, was under contract No. W-509-Eng.-1381 with the United States of America, War Department, to construct 13,350 linear feet of breakwater and to restore 12,500 feet of existing breakwater in the Pacific Ocean and the Bay of San Pedro enclosing the Los Angeles and Long Beach Outer Harbors. Under the terms of said contract, said corporation was obligated to procure, transport and fix in place rock and boulders in the con-

struction and restoration of said breakwater; and was also required to obtain and remove said material from Santa Catalina Island, situated in the County of Los Angeles, State of California.

(b) On August 28, 1941, Columbia Construction Company, pursuant to said contract with and behalf of the United States, made written application to the State of California, through its State Lands Commission, for permission to erect and maintain a dock 100 feet into the waters of the Pacific Ocean off Catalina Island approximately one mile southeast of the City of Avalon. In said application, it is stated that:

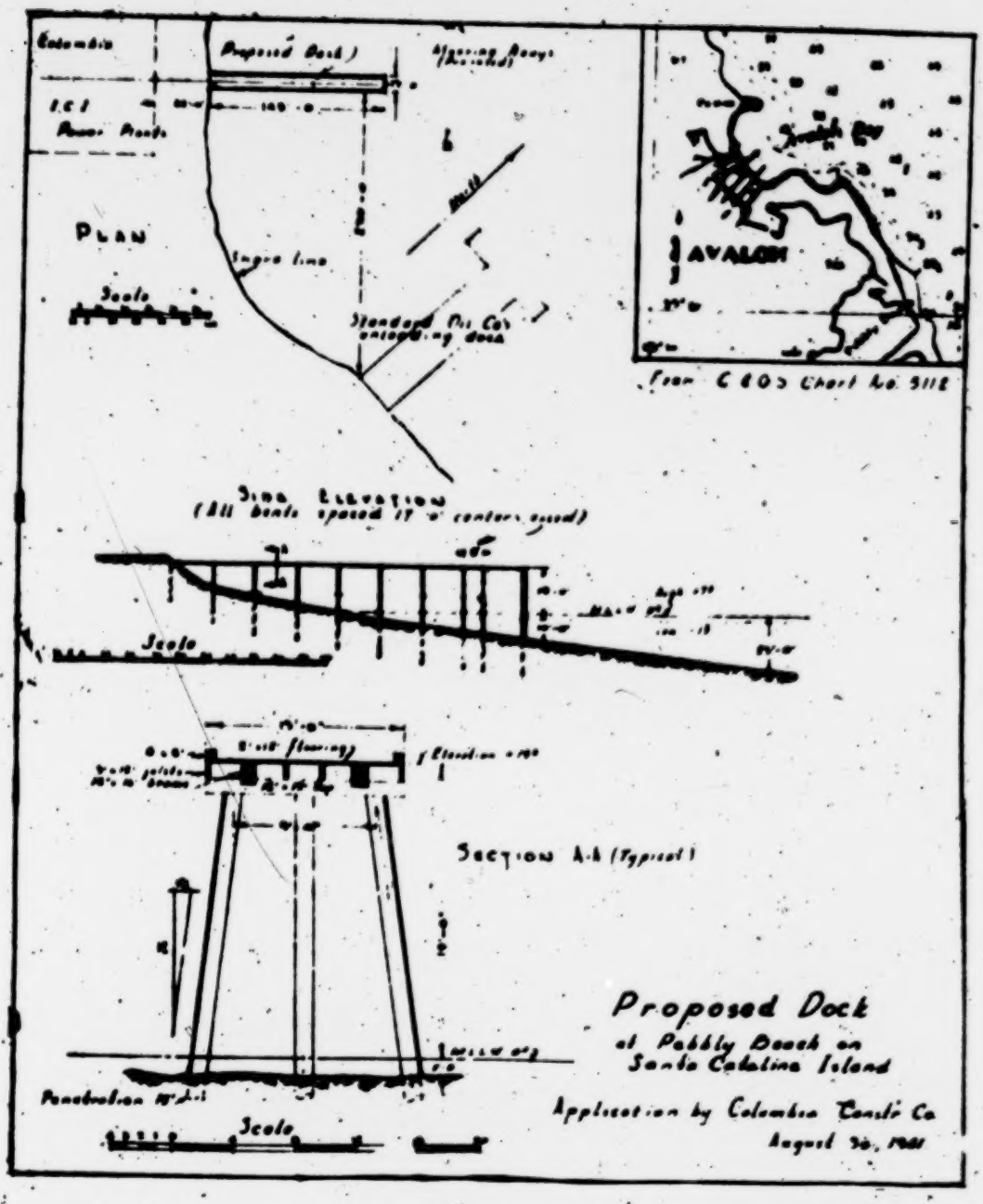
> "By instruction of the United States Engineer Division, we are hereby asking permission to drive a treated pile dock one hundred (100) feet into the water off Catalina Island. The location of the pile dock is to be one mile southeast of the City of Avalon, in the vicinity of Wrigley's old pottery plant. The dock is to be used in connection with our work of restoring and building the San Pedro breakwater. We have permission of the land owner, Santa Catalina Island Co., and would appreciate action on this at your earliest convenience."

By supplemental application dated August 30, 1941, said corporation applied to the State of California, State Lands Commission, for permission to construct and maintain an oil unloading dock

> "to be constructed at Pebbly Beach, Catalina Island, Los Angeles County, State of California. This location is outside of the unincorporated town of Ava-

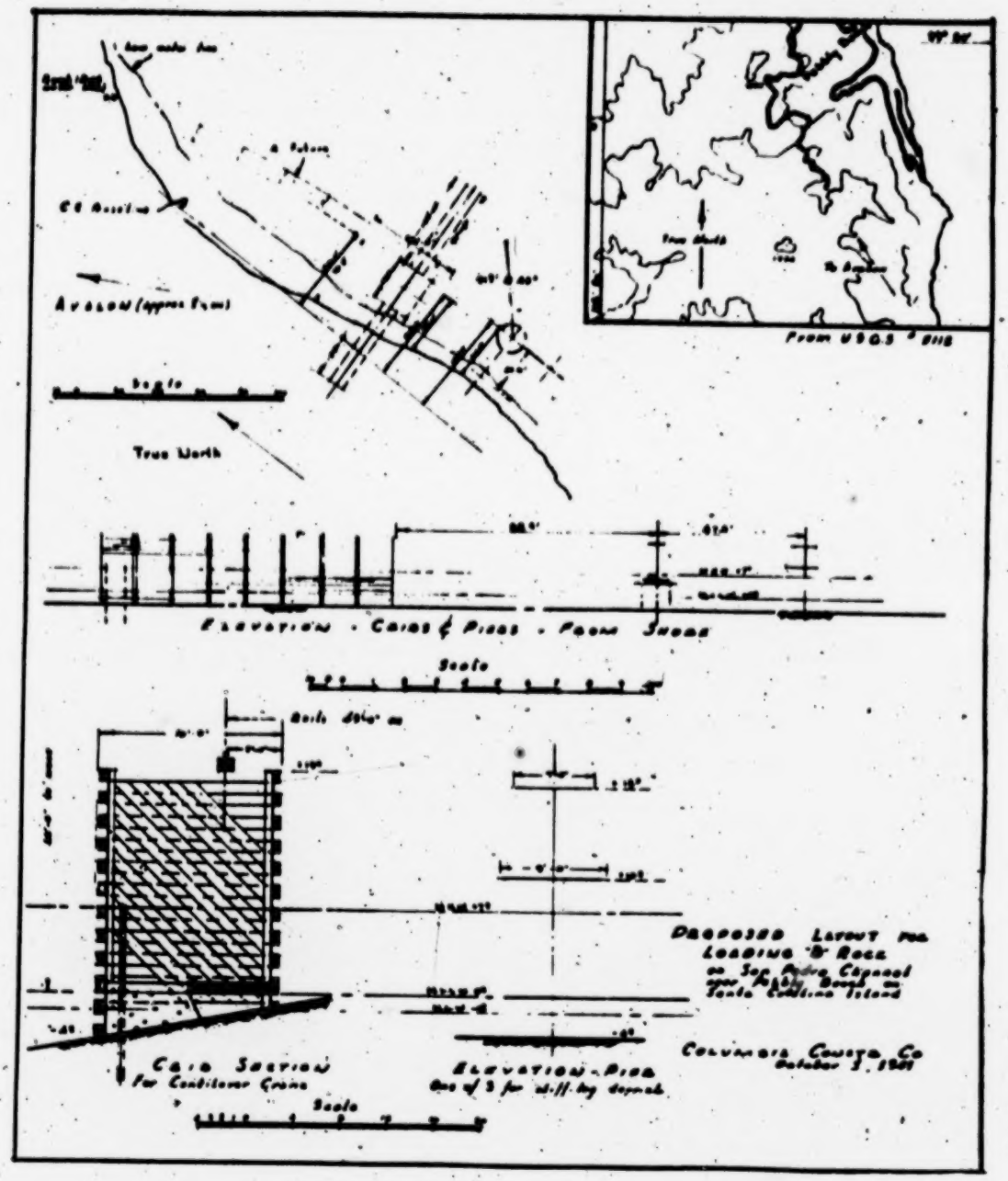
lon. Santa Catalina Island Co. is owner of this land, and we have their permission to construct said dock. Plans and specifications of the proposed structure are covered fully in the attached map. . . . It is desired to use this loading dock indefinitely. This dock is to be used in conjunction with a contract which we have lawfuly been awarded and entered into with the United States of America, dated April 1, 1941, No. W-509-Eng.-1381, under the terms of which we are, as contractor, to construct 13,350 feet of composite type detached breakwater and to restore 12,500 feet of presently existing detached breakwater at Los Angeles, California."

The plan and design of the proposed dock at Pebbly Beach on Santa Catalina Island, prepared by Columbia Construction Company and forwarded to said State Lands Commission, as aforesaid, is set forth as follows:


Columbia
Proposed Dock
Existing Pier
PLAN
Scale
Standard Oil Co
AVALON
from C & G S Chart No. 5112
Side Elevation
Scale
Section A-A (Typical)
Penetration
Scale
Proposed Dock
at Pebbly Beach on
Santa Catalina Island
Application by Columbia Construction Co
August 30, 1951

(c) On October 2, 1941, said Columbia Construction Company made a second written application to the State Lands Commission of the State of California for permission to construct and maintain a loading rock plant on and over certain tide and submerged lands in the Pacific Ocean adjoining Santa Catalina Island approximately 2⅓ miles southeast of the incorporated town of Avalon on said Island, stating that the proposed plant was to be used in conjunction with said contract with the United States for the construction and restoration of said breakwater.

A plat and sketch of said proposed rock loading plant accompanied said application to the State Lands Commission and a copy thereof is set forth as follows:


Avalon (approx. 5 mi)
True North
From U.S.G.S. 7' Quad
Scale
Elevation - Caisson & Piers - Pedestal Shoals
Scale
Caisson Section
For Cantilever Crane
Elevation - Pier
One of 3 for cliff leg derrick
Scale
Proposed Layout for
Loading "B" Rock
Columbia County, Co.
October 3, 1961

(d) Pursuant to said application of August 28 and 30, 1941, the State Lands Commission of the State of California, by resolution of said Commission, executed and delivered, on January 8, 1942, to Columbia Construction Company a written "Easement to Construct and Maintain Pier No. 42 (Sec. 675 P. C.)." Said easement was granted by the State pursuant to the authority contained in Section 675 of the Political Code for a period of twelve years from the sixth day of November, 1941. The consideration therefor was the sum of $144 upon execution of the agreement and $144 on or before the sixth day of November of each year thereafter during the term of said easement. Said easement granted the right to construct and maintain the pier upon and over certain lands described therein as follows:

> "Upon and over those certain tidelands and submerged lands in the County of Los Angeles, State of California, more particularly described as follows, to wit:
>
> "All that portion of a strip of land 200 feet in width containing one acre, more or less, lying seaward of the ordinary high water mark of the Pacific Ocean on the Island of Santa Catalina, the boundaries of which strip lie 100 feet on either side of the following described center line. [Then describing a center line measured 217.8 feet into the Pacific Ocean from the line of ordinary high water mark.]"

(e) Likewise, the State Lands Commission of the State of California, pursuant to said second application, granted, on November 7, 1941, Columbia Construction Company, an "Easement to Construct and Maintain Rock Loading Plant No. 3" for a period of twelve years, for a consideration of $288 upon execution of said easement, and

further sums of $288 on or before the tenth day of November of each year thereafter during the term of the easement. Said easement was granted for the purpose of constructing and maintaining a rock loading plant upon lands therein described as follows:

> "Upon and over those certain tidelands and submerged lands in the County of Los Angeles, State of California, more particularly described as follows, to wit:
>
> "All that portion of a strip of land 435.6 feet in width containing two acres, more or less, lying seaward of the ordinary high water mark of the Pacific Ocean on the Island of Santa Catalina, the boundaries of which strip lying 217.8 feet on either side of the following described center line. [Describing a center line extending 200 feet into the Pacific Ocean from the line of ordinary high water mark thereof.]"

(f) On February 13, 1942, the State Lands Commission of the State of California was given notice by the War Department of an application by Columbia Construction Company to construct the pier aforesaid. On February 13, 1942, the State Lands Commission of the State of California wrote the War Department in response thereto and advised that:

> "This is to inform you that Columbia Construction Company has obtained permission from this office for the construction and maintenance of a pier for rock loading plant *on state tidelands in the Pacific Ocean* at Pebbly Beach approximately 2⅓ miles southeast of Avalon, Santa Catalina Island."

Like notification was given by the State Lands Commission to said War Department of the permission it had theretofore granted to Columbia Construction Company

to construct and maintain said oil unloading dock on and over State-owned tide and submerged lands as aforesaid.

(g) On May 21, 1943, Columbia Construction Company made written request to the State Lands Commission of the State of California for permission to terminate said easements executed November 7, 1941, and January 8, 1942, as aforesaid, advising that the United States of America had terminated Contract No. W-509-Eng.-1381 on December 29, 1942, and, in view thereof, it had become necessary for said corporation under and pursuant to said contract with the United States to cancel all contractual obligations in connection therewith. For that reason, it became necessary to terminate said two easements. Pursuant thereto, the State of California granted said request to and did terminate said two easements.

2. Standard Oil Company easement:

(a) On April 23, 1943, Standard Oil Company of California, under contract with and as agent for Defense Plant Corporation, a corporation wholly owned by the United States of America, through its wholly-owned corporation, Reconstruction Finance Corporation, made written application to the State Lands Commission of the State of California for an easement to construct, maintain and operate, for a term of fifteen years, a 24 inch welded steel salt water return pipe line in the Pacific Ocean and Santa Monica Bay at El Segundo, Los Angeles County, California, as a part of a butadiene synthetic rubber plant and facility there being constructed for said Defense Plant Corporation and the United States of America; and delivered drawings depicting the location and specifications of said pipe line. Said application stated that

> "as it is contemplated that the proposed easement will be transferred to Defense Plant Corporation we

respectfully request that a provision permitting Standard Oil Company of California to do so be incorporated therein."

(b) On April 29, 1943 said application was granted by the State Lands Commission of the State of California and approval was given for the issuance of Easement No. 89 to Standard Oil Company of California for a right of way over tide and submerged lands of the State of California at El Segundo for the construction of said 24 inch salt water return pipe line at an annual rental of $44.40, for the period of construction, and operation of said butadiene plant by Standard Oil Company of California under contract with Defense Plant Corporation, said easement to terminate in the event Defense Plant Corporation is no longer owned by the Federal Government and in no event to exceed a fifteen year term.

Pursuant thereto, on April 29, 1943, said State Lands Commission executed said "Right of Way Easement for Salt Water Return Pipe Line—No. 89" and which in turn was executed by said Standard Oil Company of California, granting said right of way, for said purposes:

"over and upon those certain tide and submerged lands located within the County of Los Angeles more particularly described as follows:

"A right of way 100 feet in width extending from the ordinary high water mark of the Pacific Ocean to a line 220 feet offshore and parallel with the ordinary high water mark, such right of way lying fifty feet on each side of the following described centerline: [describing a line beginning at a point on the ordinary high water mark of the Pacific Ocean and extending 220 feet westerly out into the Pacific Ocean]"

(c) Thereafter, on October 12, 1943, said Standard Oil Company of California wrote said State Lands Commission advising that the 24 inch salt water return line installed in the Pacific Ocean and Santa Monica Bay at El Segundo under said Easement No. 89 was completed August 11, 1943.

(d) Pursuant to said Easement Agreement, Standard Oil Company of California has delivered the rentals required thereunder to said State Lands Commission. Defendant is informed and believes and upon such information and belief alleges that Defense Plant Corporation and the United States of America have reimbursed and paid Standard Oil Company of California for all rental and expenses in connection with said Easement No. 89. Likewise defendant is informed and believes and upon such information and belief alleges that under the written agreement between Defense Plant Corporation, on behalf of the United States of America, the title, property, rights and interest therein acquired by Standard Oil Company of California, as agent for the Defense Plant Corporation, vested immediately in Defense Plant Corporation and in the United States of America; and that the title and rights obtained by Standard Oil Company of California under and pursuant to said Easement No. 89 from the State of California are deemed to be vested in Defense Plant Corporation and the United States of America, from and after the date of execution of said Easement No. 89, to-wit, April 29, 1943.

(e) The attorneys for Defense Plant Corporation received the said easement and passed their opinion on the title of the state and its grantee, as defendant is informed and believes and therefore alleges.

VIII.

The State of California upon the request and solicitation of the United States has made numerous grants to the United States of America of tide and submerged lands located in entrances to bays and in bays and harbors within the boundaries of the State over a period in excess of 90 years. Some of such grants are the following:

1. Custom House Grant:

(a) In the year 1850 Congress appropriated $100,000 for the establishment of a Custom House in the City of San Francisco. (9 Stats. 540.) In the year 1851 Congress made a further and additional appropriation of $300,000 for the acquisition, establishment and completion of said Custom House in the City of San Francisco. (9 Stats. 609.)

By Act of July 21, 1852 (10 Stats. 24), Congress enacted a statute providing in part as follows:

> "That the Secretary of the Treasury be, and he is hereby authorized to purchase for the United States a suitable piece of ground at a central point in the City of San Francisco, as a site for the erection of a custom-house heretofore authorized to be built . . . the sum of $40,000 is hereby appropriated; *Provided,* That if the said Secretary of the Treasury shall fail to obtain such ground on satisfactory terms, then the said sum or such portion thereof as may be necessary, may be expended in providing the proper foundations for said custom house on the site heretofore selected for the purchase."

In 1854 Congress made a further appropriation of $50,000 for the purchase by the United States of a site for

a Custom House at San Francisco, and appropriated an additional sum of $10,000 for the extinguishment of any claims which might arise in connection with that site. (10 Stats. p. 559.)

(b) In the year 1854 the State of California was requested by the United States of America to sell and convey to the latter title to certain tide and submerged lands in the City and County of San Francisco for said Custom House site. The site thus sought to be acquired was, on September 9, 1850 and continued to be until after the year 1852, as depicted on the map published in 1853 by the United States through its United States Coast Survey, below the line of mean high water of the Bay of San Francisco and then covered by the navigable waters of said Bay. (23 Bancroft's Works, p. 628 footnote.)

(c) Pursuant to such request of the United States, the Legislature of the State of California enacted a statute approved May 3, 1854, authorizing the Governor of the State of California to convey to the United States said site formerly covered by the navigable waters of the Bay of San Francisco. Said site was described in said Act of 1854 as being bounded on the North by Jackson Street, on the East by Battery Street, on the South by Washington Street and on the West by Sansome Street. Said statute provided that the value of the site should be ascertained by appraisers in the manner fixed in said statute, and that the site should be conveyed by the Governor of the State of California to the United States in consideration of the United States paying to the State of California in cash one-half of the appraised value as determined by said appraisers.

(d) Appraisers were duly appointed in accordance with that statute and determined the value of said custom house site at $300,000.

(e) On or about September 4, 1854 the Governor of the State of California executed and delivered a deed conveying said custom house block site to the United States of America in consideration of receiving in cash the sum of $150,000 paid by the United States. (Journal of the Assembly, 6th Session, 1855, pp. 26, 72.)

(f) There having been some question as to the validity of the grant of the United States Custom House site contained in said Act approved May 3, 1854 as aforesaid, the Legislature of the State of California enacted a further statute, approved March 30, 1868 (Stats. 1867-68, p. 687), authorizing and directing the Governor of the State of California, upon demand by the United States Attorney for California, to convey to the United States by good and sufficient deed, all the right, title and interest which the State of California then had or might thereafter acquire in and to said Custom House Site, described in statute as follows:

> "All that certain lot or block of land, *or beach and water property*, in the City of San Francisco, bounded on the North by Jackson Street, on the East by Battery Street, on the South by Washington Street, and on the West by Sansome Street, then the lot or block of land known as and called the Custom House Block; . . ."

(g) The Attorney General of the United States examined the title of the State of California to said tract of tide and submerged lands thus conveyed to the United States for a Custom House Site, and passed his opinion

thereon, as defendant is informed and believes and therefore alleges.

2. Mare Island Grant:

(a) In the year 1853 the United States of America was in process of acquiring all interests in and to the upland of Mare Island in San Francisco Bay, California. The Secretary of the Navy requested a title opinion from the United States Attorney General in connection therewith and also in connection with the title of the State of California as to the shores of Mare Island, and tide and submerged lands out to ship channel.

(b) On April 9, 1853 the Attorney General addressed an opinion to the Secretary of the Navy. In said opinion of the Attorney General, with respect to the title of the State of California in and to that portion of Mare Island below the line of mean high tide and adjacent and submerged lands, stated as follows:

> "Following up the suggestions and inquiry made by Mr. Cooley, I am satisfied that the *State of California may set up and probably maintain title as against the United States* to so much of Mare Island as is subject to overflow by water, whether tidal or otherwise, *that is, at least, to all below high water mark.*
>
> "In the first place, the Supreme Court has decided in the case of Pollard v. Hagan, 3 Howard 212, that the *shores* of *navigable waters,* and the *soils under them* were not granted by the Constitution to the United States, but were reserved to the states respectively, and *the new states have the same right, sovereignty and jurisdiction over this subject as the original states.* This decision has been recognized

and more than once reaffirmed by the Supreme Court. See Goodrich v. Kibbe, 9 Howard 471-477, and Doe v. Beebe, *et al.*, 13 Howard 25. It is immaterial, under these decisions, whether the general sovereignty of the United States, and their right of domain, come by treaty with a foreign power or otherwise. *In all cases, on the admission of any state into the Union the land of the shores below high water mark, passes to, and vests in that state by virtue of the Constitution.*

"In the second place, by act of Congress passed the 20th day of September, 1850, all the swamp and other overflowed lands in the State of Arkansas, made thereby unfit for cultivation are granted to said state, and the provisions of the Act are extended to and its benefits conferred upon each of the several states of the Union in which such swamp and other overflowed lands may be situated. The State of California had already, by Act of September 9, 1850, been admitted into the Union and is, of course, entitled to all uncultivated overflowed lands within its limits as against the United States. It seems to me, that *on one or both of these grounds,* the State of California *may lay claim to all that of Mare Island* which is now below high water mark, and which is just as necessary as the upland, Nay, more necessary for the purposes of a Navy Yard. It will not avail anything for the United States to acquire the upland, unless it may construct wharves and docks, which of course, must be situated on this very overflowed or tide water shore land. Nay, how can the United States enjoy the use of Mare Island as a Navy Depot *while its entire shore belongs to California* who's rights of property may shut up the Island against access of ships as effectually as if it were surrounded by a wall of granite . . .

"I recommend that therefore, as indespensible prerequisites to any lawful expenditures of public money on Mare Island:

* * * * * * * *

"*Secondly,* that the State of California be invited to relinquish to the United States whatever claim, if any, she may have, to the shores or overflowed lands of Mare Island."

(c) The Secretary of the Navy, on October 3, 1853, addressed a communication to the Governor of the State of California, enclosing a copy of said opinion of the Attorney General dated April 9, 1853. He there advised that Congress had made preparations with a view to establishing a Navy Yard at Mare Island; that under the existing law no improvement could be commenced on lands acquired by the United States until a favorable title opinion had been rendered by the United States Attorney General; and that in view of the Attorney General's opinion of April 9, 1843 aforesaid

"the law will not allow me to commence these works until some action on the part of said Legislature. I therefore request Your Excellency at your earliest practical convenience, to invite the attention of the Legislature to this subject in order *that proper acts may be passed ceding jurisdiction and relinquishing title to Mare Island.*"

(d) Pursuant thereto the Legislature of the State of California enacted a statute approved May 11, 1854 (Stats. 1854, p. 48), among other things, granting and conveying to the United States of America the title of the State of California in and to

"such portions of the Island . . . as are overflowed, beach, or swamp lands, on the Eastern shore

of the said Island, from the Southern point thereof to a parallel intersecting the Northern point of the highlands, and *extending into the waters of the bay or straits washing the Eastern shore of said highlands of the Island, to the ship channel . . .*"

3. Quarantine Station Grant:

(a) A site for a quarantine station in the Bay of San Diego was requested by the United States to be conveyed to it by the State of California.

(b) Pursuant to such request the Legislature of the State of California enacted a statute approved June 16, 1906 (Stats. 1906, p. 77) granting said request. Said statute provided in part as follows:

"Upon the enactment of proper legislation by Congress providing for the taking of the real property hereinabove described *belonging to the State of California,* situated in San Diego County, the Board of State Harbor Commissioners for the Bay of San Diego may, and is hereby authorized, to convey to the United States for quarantine purposes the title to, and cede to the United States Government jurisdiction over the following described tidelands in San Diego Bay: [particularly describing a parcel 1000 feet long and 600 feet wide of tide and submerged lands adjoining the main ship channel at the entrance to San Diego Bay]."

4. Naval Hospital Grant:

(a) A site for a naval hospital in the Bay of San Diego was requested by the United States of America

to be granted by the State of California and the City of San Diego.

(b) Legislation pursuant thereto was enacted by the State of California approved April 28, 1921 (Stats. 1921, p. 54), thereby granting to the United States of America a 17.04 acre parcel of tide and submerged lands to be held by the United States for the exclusive use of its Naval Department as a site for a Naval Hospital. Said statute recited that this 17.04 acre tract of tide and submerged lands is the same tract of land conveyed to the United States by that certain conveyance made by the City of San Diego dated September 3, 1919, which had been ratified, confirmed and approved by the electors of the City of San Diego voting at a special election held August 3, 1920.

5. Benicia Military Reservation Grant:

(a) A parcel of submerged land lying in front of the Benicia Military Reservation in San Francisco Bay was granted to the United States of America by the State of California in the year 1935. In this connection defendant alleges that:

(b) On October 17, 1933 the United States Secretary of War addressed a communication to the Governor of the State of California advising of the addition of a small parcel of land to the Benicia Arsenal Military Reservation by Executive Order; and of a further addition to said Reservation of a parcel of land acquired from the Southern Pacific Company in 1929. The Secretary of War

there referred to an Act of the California Legislature, approved March 9, 1897, by which

> "all of the right, *title and interest of the State of California to the lands lying between high water mark and a line 300 yards beyond low water mark adjacent and contiguous to all the then reservation including Benicia Arsenal were ceded to the United States.* If such cession were now made by the State of California for the *submerged lands* in front of the lands referred to in the preceding paragraph it would round out the reservation . . . .
>
> "It is therefore requested that the State of California cede to the United States: . . . .
>
> > "(3) All of its right and title and exclusive jurisdiction over the lands between high water mark and a line 300 yards below low water mark lying adjacent and contiguous to the lands acquired from the Southern Pacific Railroad Company in 1929, and to the parcel of land lying in front of Lot 1, Section 6 described in section (2) above and between the northerly line of the *lands in the reservation ceded by the Act of March 9, 1897* and the present northerly line of the reservation prolonged easterly to an intersection with a line three hundred yards below low water mark."

A sketch showing the relation of the various parcels of land in question was enclosed with said letter of the Secretary of War and a copy of said sketch is attached hereto.

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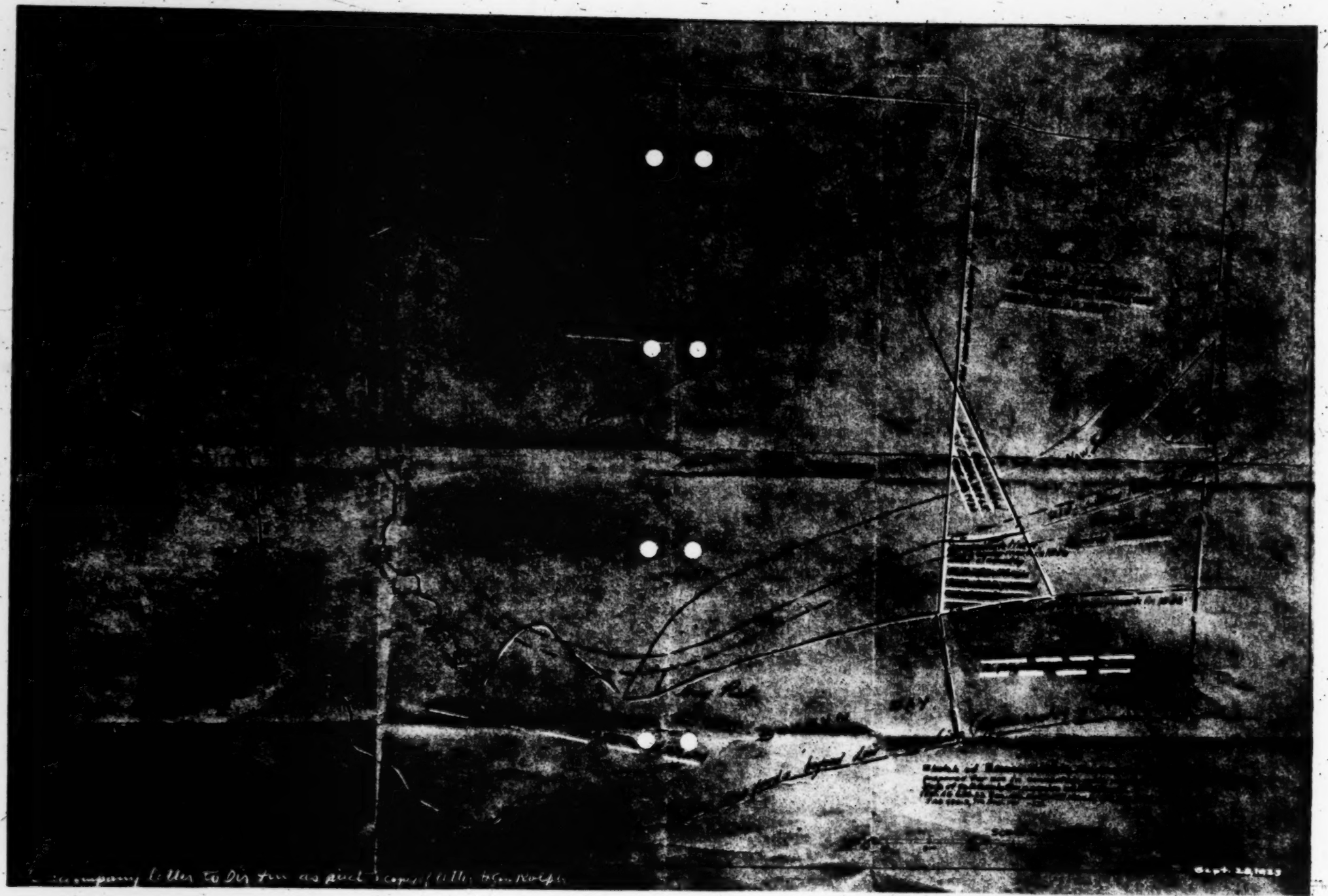
Sept. 28 1923

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As a result of said request and further correspondence between the Secretary of War and the Governor of California and other officials of both governments, the Legislature of the State of California enacted a statute approved July 15, 1935 (Stats. 1935, p. 1672) conveying to the United States of America

> "the *title of the State of California* . . . in and to the parcel of land extending from high water mark out to the 300 yards below low water mark lying adjacent and contiguous to the lands acquired by the United States as an addition to Benicia military reservation by deeds from Southern Pacific Railroad Company and the Southern Pacific Company dated March 9, 1929 and March 26, 1931; and to the lands hereinabove described in front of Lot 1, Section 6 and between the northerly line of the *lands ceded as a part of that reservation by the Act of the Legislature of California approved March 9, 1897* . . . and the northerly boundary line of the present reservation prolonged easterly to the intersection with the line three hundred yards out beyond low water mark . . ."

B.

Grants by California Municipalities to the United States.

The State of California, over a period of the last forty years, has granted to the several coastal municipalities tide and submerged lands lying within their respective municipal boundaries, the grants to said municipalities including, in most instances, the submerged lands extending out three miles into the Pacific Ocean.

Said municipal grantees have been authorized by the State of California, both by general legislation and by special legislation, to grant to the United States portions of the tide and submerged lands within their municipal boundaries. Some of the statutes generally authorizing municipalities, to which the State of California has conveyed tide and submerged lands, to make grants thereof to the United States, are the following:

(a) By Act of the Legislature approved May 28, 1913 (Stats. 1913, p. 470) it is provided that:

> "Any municipal corporation to which tidelands and submerged lands situate within the boundaries thereof have been granted by the State of California is hereby authorized and empowered to grant portions of such lands to the United States, for purposes of the United States . . ."

provided that a majority of the electors of such municipality approve thereof.

(b) The Legislature enacted a statute, approved June 14, 1929 (Stats. 1929, p. 1691) authorizing any municipal corporation to which tide and submerged lands situate within the boundaries thereof

have been or may thereafter be granted by the State of California, to grant all or any portion of such tide and submerged lands to the United States for public or governmental purposes, including military or naval purposes of the United States, provided that no such grant shall be made unless authorized and approved by the vote of a majority of the electors of such municipality. Said statute confirmed, ratified and declared to be valid any grant theretofore made by any municipality to the United States of any portion of the tide or submerged lands situated within the boundaries of such municipal corporation authorized by vote of a majority of the electors of such municipality.

Numerous grants, leases, easements and other interests in and to tide and submerged lands, both under the coastal waters of California and in its bays, harbors, rivers and lakes, have been conveyed to the United States, pursuant to its request therefor, by the several municipal grantees of the State of California, some thereof being the following:

I.

City of Newport Beach.

The City of Newport Beach made grants to the United States of America of substantial portions of submerged lands in the Pacific Ocean located outside of any harbor or bay and did so at the specific instance and request of the United States. In this connection defendant alleges that:

1. The City of Newport Beach was granted all the tide and submerged lands within its municipal boundaries by the State of California by Act of the State Legis-

lature approved May 25, 1919 (Stats. 1919, p. 1011). Said Act grants

> ". . . all the right, title and interest of the State of California held by said State by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands within the present boundaries of said City, and situated below the line of mean high tide of the Pacific Ocean which border upon and are in front of the upland now owned by said City and such other upland as it may hereafter acquire."

to be held solely for the establishment and improvement and conducting of the harbor.

By Act of the Legislature of the State of California approved April 5, 1927 (Stats. 1927, p. 125), the State of California granted to the City of Newport Beach all the tide and submerged lands bordering upon, in and under Newport Bay not theretofore granted to said City nor to the County of Orange, for harbor purposes.

By Act of the Legislature of the State of California, approved April 20, 1929 (Stats. 1929, p. 274), the line of ordinary high tide of the Pacific Ocean was established and declared thereby defining the limits of the grant of tide and submerged lands made by the State of California to the City of Newport Beach, as aforesaid.

By Act of the Legislature of the State of California, approved June 15, 1929 (Stats. 1929, p. 1704), the State of California granted to the City of Newport Beach the title of the State of California in and to all the tide and submerged lands and filled lands bordering upon, in and under the Pacific Ocean situated below the line of mean high tide of the Pacific Ocean not theretofore granted

to said City nor to the County of Orange, for harbor purposes.

2. The City of Newport Beach is a municipal corporation of the sixth class of the State of California. In its Act of Incorporation under the Municipal Incorporation Act of the State of California, the westerly municipal boundaries of the City of Newport Beach are fixed as extending three miles into and along the Pacific Ocean and running from the southerly to the northerly boundary limits of said City along a line three miles westerly of the shore line of the Pacific Ocean.

3. The Chief of Engineers of the United States Army on September 25, 1933, made a written report to the Secretary of War recommending that the United States undertake certain improvements in connection with the entrance to Newport Bay and to said Bay by extending the jetties in the Pacific Ocean at the entrance of Newport Bay, by dredging an entrance channel 20 feet deep and 500 feet wide, by enlarging the main inner channels and turning basins to 20 foot depth with increased widths, and for other improvements, estimated to cost $1,835,000, of which $633,000 was for jetty construction work. Said Chief of Engineers recommended to the Secretary of War that such improvement be undertaken by the United States providing that (i) local interests would contribute half of the cost and (ii) the latter would furnish free of cost to the United States all necessary rights of way, and disposal areas for dredged material.

4. The Secretary of War transmitted to Congress said report of the Chief of Engineers recommending im-

provements to the entrance of and to Newport Bay pursuant to congressional authorization and appropriation.

5. The United States required the City of Newport Beach to furnish free of cost to the United States, in accordance with the recommendations of the Chief of Engineers, as aforesaid, and pursuant to authorization of Congress title to submerged lands to be used for the base of the jetties to be constructed in the Pacific Ocean at the entrance to Newport Harbor.

The War Department, through its District Engineer at Los Angeles, California, in January, 1934, designated the parcels of submerged lands required to be granted to the United States for the East Jetty and the West Jetty located in the Pacific Ocean at the entrance to Newport Harbor and of all sites for easements in connection therewith.

On February 9, 1934, the War Department, through its District Engineer at Los Angeles, wrote the City of Newport Beach and advised that it would be necessary for the City of Newport Beach to execute a warranty deed conveying to the United States the tracts of land for the East Jetty and the West Jetty. Said letter advised said City, with respect to the title to said tracts of land, as follows:

> "The United States Attorney General's Office has to approve the title and deeds before fulfillment of the law can be said to have been accomplished . . . .
>
> "Evidences of title are required to be furnished under such rules and regulations as the U. S. Attorney General may direct, one of which is that a deed shall be prepared and 'submitted by the grantor for acceptance' on the part of the United States when the validity of the title is established.

"The office of the United States District Attorney in Los Angeles has the detailed legal procedure on file necessary to help your city (and county) attorney in drawing up all of the papers in the manner required by the U. S. Department of Justice. These requirements refer not only to the form of conveyance, but also to the proceedings which must be in accordance with city charter. There must also be submitted, in due form, proof as to validity of title and authority of grantor or grantors to so act.

"In connection with validity of title, an abstract is preferable. However, if this is too slow and costly, the U. S. Attorney General would probably be satisfied if the city would secure in lieu thereof, the following:

"(1) A certificate from the Surveyor General of the State to the effect that these particular parcels of land to be deeded had never been conveyed by the State prior to the conveyance to the city of Newport Beach;

"(2) A certificate from the City Clerk to the effect that said parcels of land had never been conveyed by the city and that there is no record of such conveyance in his office other than the one to the United States;

"(3) A certificate from the City Abstractor, *tracing the title from the State, through the city, to the United States, showing title clear of any claim, incumbrance or prior conveyance.*

"While delivery is essential, it is not complete until title proves good.

"A quit-claim deed to the existing jetties is also required."

The representative of the United States District Attorney's office in Los Angeles; the City Attorney of the

City of Newport Beach, and the City Engineer of the City of Newport Beach, conferred on April 29, 1934, regarding the method of conveying title to the United States as required by the Act of Congress. The City of Newport Beach, on May 2, 1934, advised the War Department, through its District Engineer at Los Angeles, of said conference and reported thereon in part as follows:

> "Mr. Powell [Deputy United States Attorney in Los Angeles] recommended in place of a quit-claim deed that the city give a warranty deed to all the right, title and interest to the east and west jetties, the warranty deed to include the right of extending the jetty. He thought that this method of conveyance would be more acceptable as the *State of California has conveyed to the City of Newport Beach certain rights to tidelands and submerged lands along the Ocean Front and from the City limits of Newport Beach extending three miles from the shore line.*"

6. In order to grant the tide and submerged lands to the United States as required by the Act of Congress, the City of Newport Beach was required to obtain authorization therefor from the qualified electors of said city at a special municipal election called for that purpose, in order to comply with the Acts of the California Legislature approved May 28, 1913 and June 14, 1929, above referred to.

Accordingly, the City of Newport Beach held a special municipal election on September 20, 1934 and submitted to the qualified electors of said city five Propositions involving the question of whether or not the five grants of tide and submerged lands therein described should

be made by the City of Newport Beach to the United States of America.

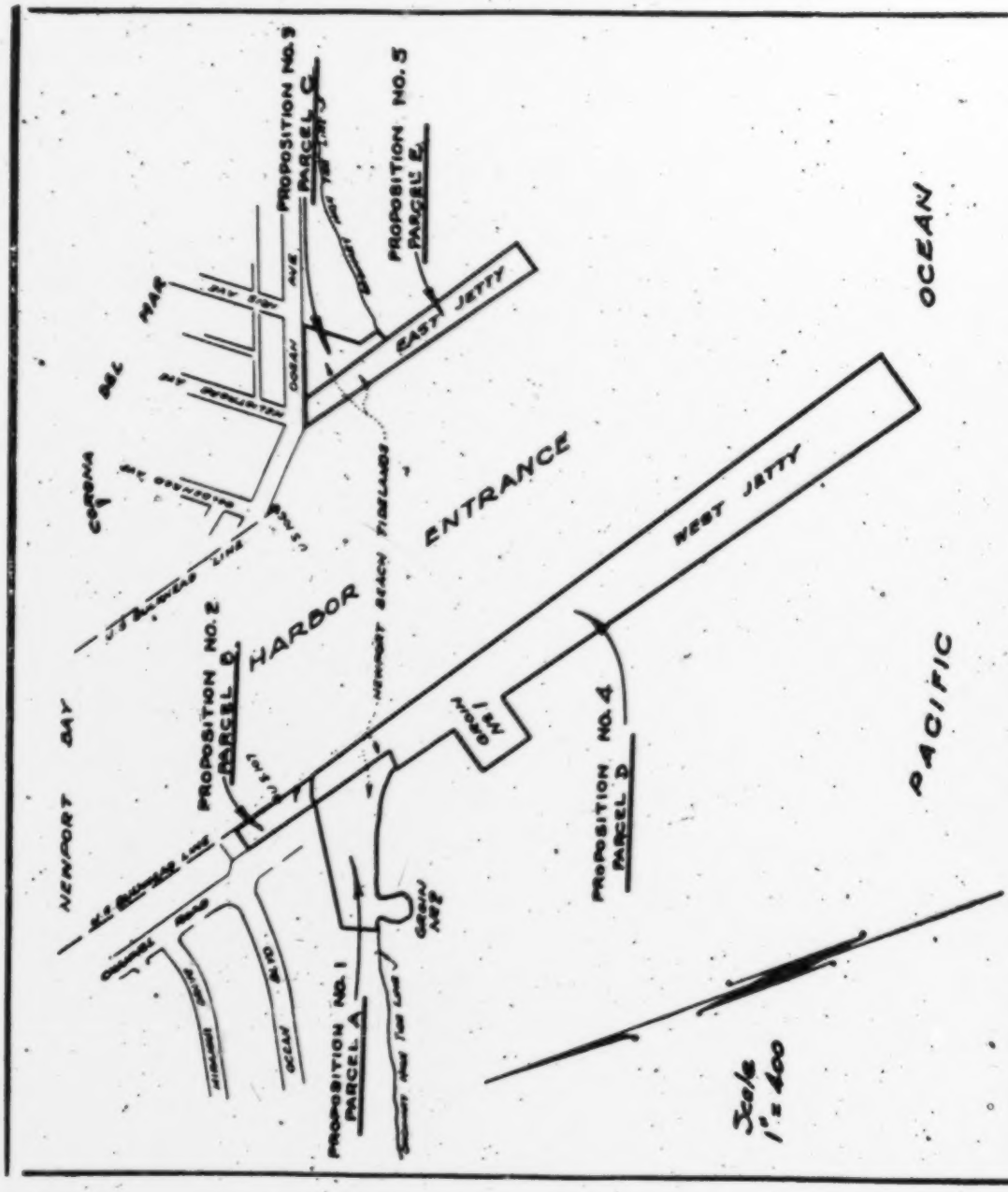
Propositions Nos. 1 and 2 thus submitted to said electors involved questions of whether or not the City of Newport Beach shall grant to the United States Parcel A, being approximately 1⅓ acres, and Parcel B, being approximately ⅓ acre of tide and submerged lands located at the shore end of West Jetty, including the rock groin at the shore end thereof.

Said Proposition No. 3 involved the question whether the City of Newport Beach shall grant to the United States Parcel C, being approximately one-half (½) acre of tide and submerged lands adjacent to East Jetty.

Said Proposition No. 4 involved the question of whether the City of Newport Beach shall grant to the United States those tide and submerged lands described in Parcel D thereof, being approximately 9 acres, and constituting the main part of West Jetty. Said Parcel D consists of a long narrow strip extending approximately 2000 feet into the Pacific Ocean, being about 190 feet wide.

Said Proposition No. 5 involved the question of whether the City of Newport Beach shall grant to the United States those tide or submerged lands described therein as Parcel E, being approximately 1 2/3 acres, and lying in a long narrow strip extending into the Pacific Ocean approximately 800 feet by approximately 100 feet in width.

A sketch showing the five parcels described as Parcels (A), (B), (C), (D) and (E) in the five Propositions submitted to the electors of the City of Newport Beach on September 20, 1934, is set forth as follows:



The electors of the City of Newport Beach voted in favor of each of said five Propositions and thereby authorized the City of Newport Beach to grant to the United States said five parcels of tide and submerged lands lying in the Pacific Ocean outside the entrance to Newport Bay Harbor.

7. The City Council of the City of Newport Beach, on September 20, 1934, adopted its five Resolutions Nos. 849, 850, 851, 852 and 853, reciting the results of said election of September 20, 1934, and resolving that the City of Newport Beach grant to the United States by warranty deed to be executed by the Mayor and City Clerk of said City, on behalf of said City, the real property particularly described in each of said resolutions, being the same property particularly described as Parcels (A), (B), (C), (D), and (E) in said five Propositions heretofore submitted to said electors, as aforesaid.

Pursuant thereto and under date of September 25, 1934, the City of Newport Beach executed five warranty deeds to the United States of America granting to the United States for public and governmental purposes, lands described as parcels (A), (B), (C), (D) and (E) as aforesaid. Said deeds were transmitted to the War Department through its District Engineer at Los Angeles under date of October 3, 1934, by the City of Newport Beach.

Said deeds were duly accepted by the United States of America through its War Department by duly record-

ing said five warranty deeds on March 5, 1935, with the County Recorder of Orange County; Parcel (A) deed being recorded in Book 740, Page 77, Official Records of said County; Parcel (B) deed being recorded in Book 739, Page 219, Official Records of said County; Parcel (C) deed being recorded in Book 741, Page 18, Official Records of said County; Parcel (D) deed being recorded in Book 738, Page 216, Official Records of said County; and Parcel (E) deed being recorded in Book 737, Page 316, Official Records of said County.

8. Each of said five warranty deeds thus accepted by the United States of America, as aforesaid, contained a covenant on the part of the City of Newport Beach that said City as grantor:

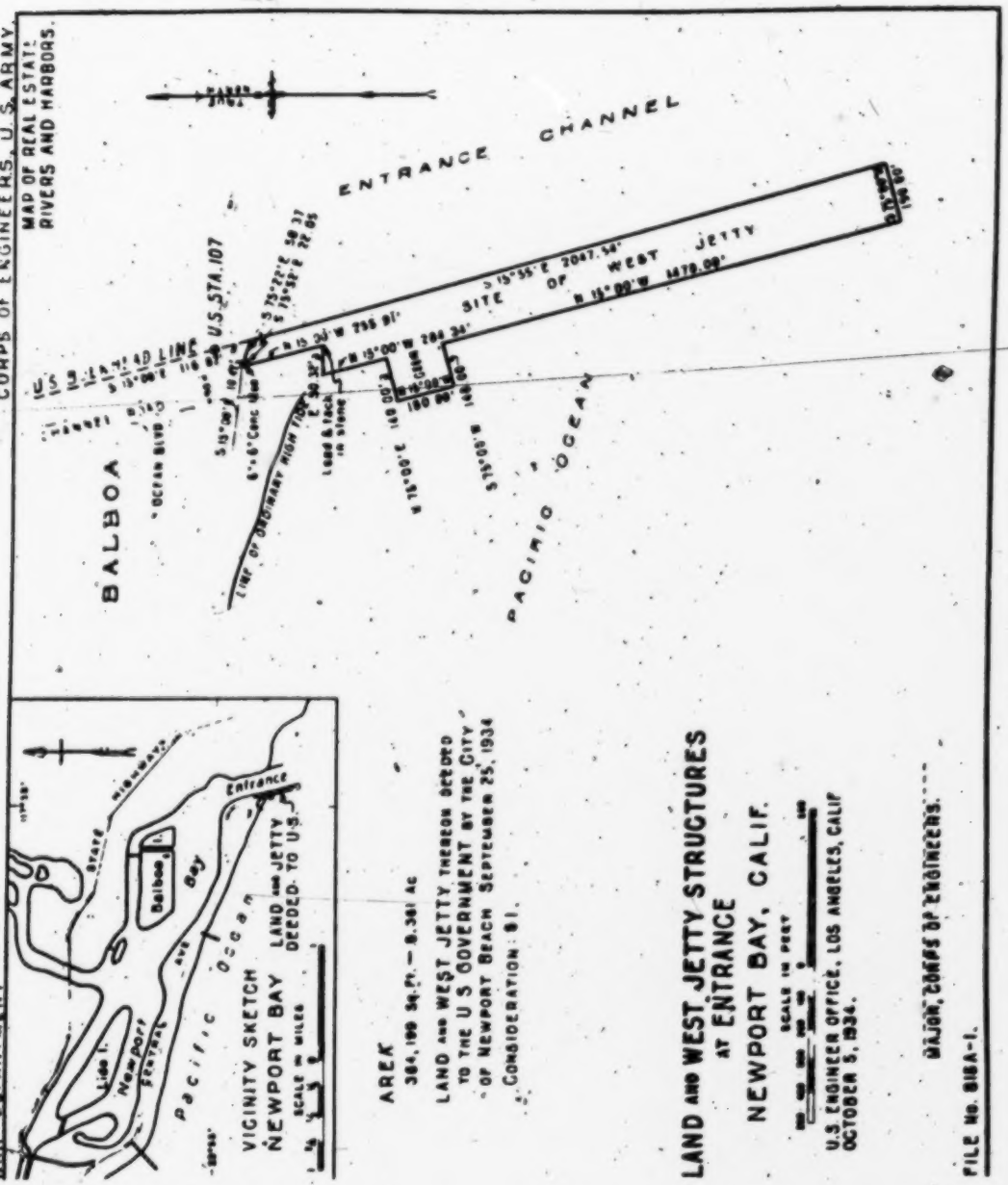
> ". . . is lawfully seized in fee simple of the above described premises; that it has a good right to convey; . . . . and that said grantor and its assigns will forever warrant and defend all of said property so granted to the said grantee and its assigns against every person lawfully claiming the same."

9. The War Department through its Corps of Engineers, United States Army, under date of October 5, 1934, prepared three plats to be used as exhibits to said five warranty deeds.

(a) The first of said three plats bore File No. 815A-1 and bears the legend thereon reading:

> "Land and West Jetty thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration: $1."

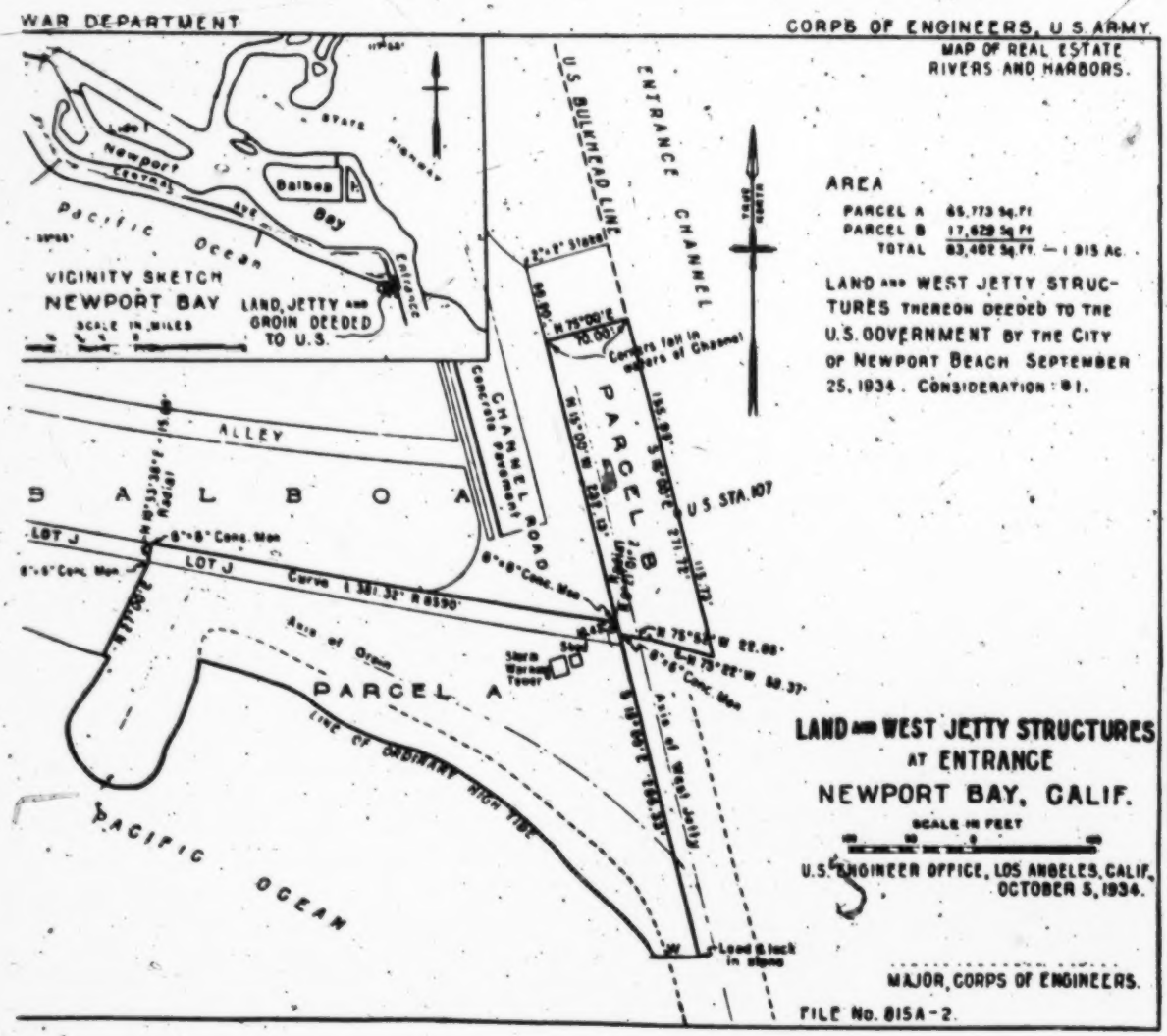
Said plat also contains a statement of the area contained in said grant of the site of West Jetty as being 8.361 acres. A copy of said plat is set forth as follows:



(b) The second of said three maps bears File No. 815A-2 and bears the legend:

> "Land and West Jetty structures thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration $1."

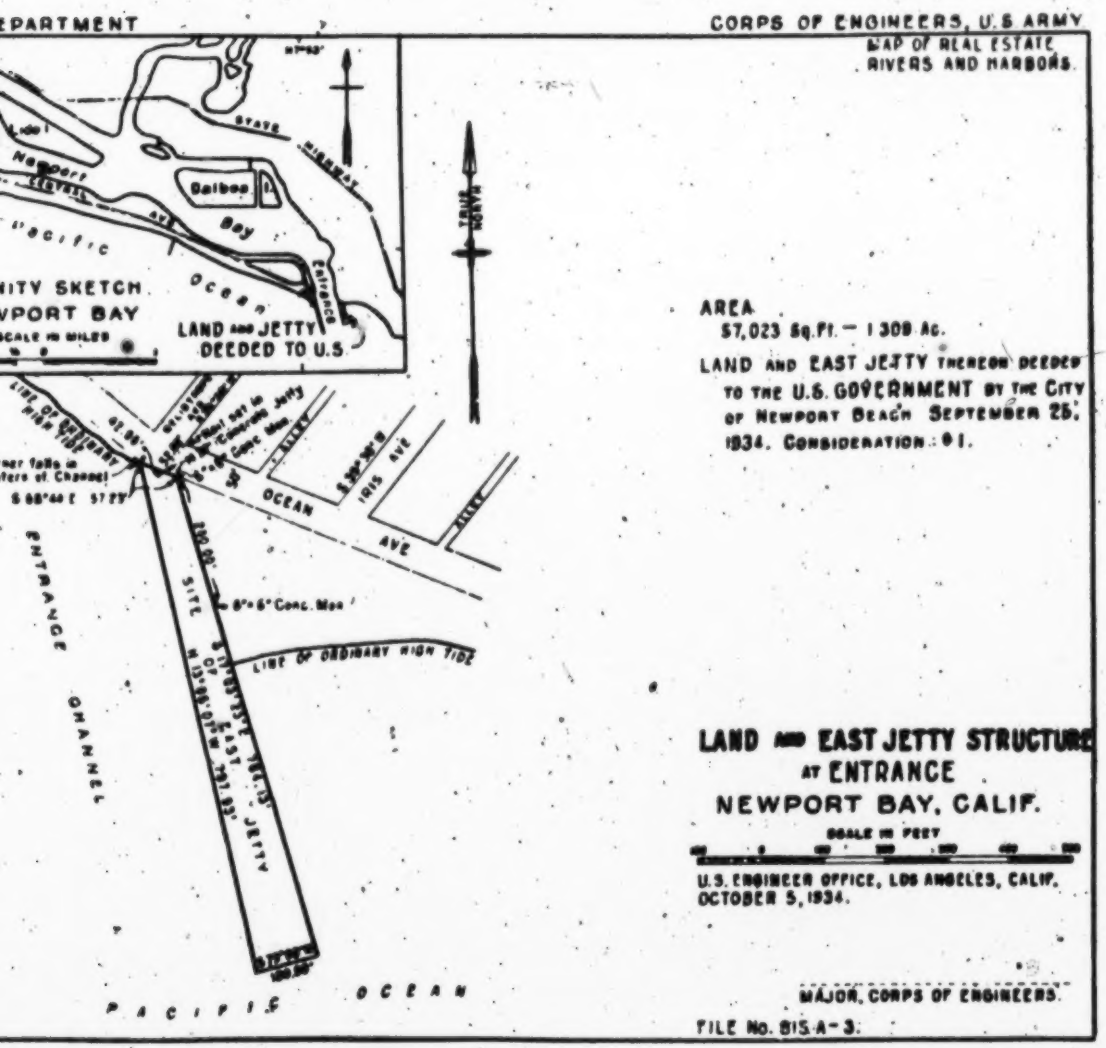
Said plat also contains a computation of the area of Parcels (A) and (B) shown thereon as containing a total of 1.915 acres. A copy of said plat is set forth as follows:



(c) The third of said three map plats is marked "File No. 815A-3" and bears the legend thereon:

"Land and East Jetty thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration $1."

Said map also contains a computation of the area of said site of the East Jetty as containing 1.309 acres. A copy of said plat is set forth as follows:



10. Said five warranty deeds, and the language thereof, were prepared by the United States Attorney at Los Angeles in conference with the City Attorney of said City in order to meet the requirements of the Act of Congress requiring a favorable opinion on title to property being acquired by the United States.

11. Pursuant to authorization from Congress and the Report of the Chief of Engineers, as aforesaid, requiring the United States to be furnished free of cost to it of disposal areas for the deposit of dredged materials in improving Newport Harbor and entrance, the City of Newport Beach executed a written permit or easement to the United States granting to the United States permission and privilege to deposit dredged materials on city owned lands below the line of ordinary high tide of the Pacific Ocean in the City of Newport Beach.

Said instrument was exectued under date of August 18, 1934, and was acknowledged in writing by the United States by its War Department. Said instrument contained a covenant on the part of the City of Newport Beach that, in consideration of the work and improvement being done by the United States, said city:

> "Specifically agrees with the said United States of America . . . that the said City of Newport Beach is *lawfully seized in fee simple of all tidelands and submerged lands of the Pacific Ocean in the City of Newport Beach* . . . .; that it has the legal right to grant permission to said United States of America . . . to dump all dredge materials along its said water front, aforesaid . . . and that said City of Newport Beach *will forever warrant and defend the title to the said tide or submerged lands,* . . . on which dredge materials may be deposited as aforesaid, . . ."

Said instrument thereupon provided that:

> "It is further understood and agreed that upon the acceptance by the United States of Amerca of this permit, in writing, that the same shall be in full force and effect and be binding legal obligations of the City of Newport Beach."

Said permit-easement instrument was prepared with the assistance and cooperation of the United States Attorney at Los Angeles, representing the United States of America in conjunction with the City Attorney of the City of Newport Beach, and its language was carefully prepared as a result of conferences held between said attorneys and in order to accomplish the requirements of the Acts of Congress requiring the United States Attorney to pass a favorable opinion on instruments of that character.

II.

City of Long Beach.

(I)

The City of Long Beach was incorporated and its municipal boundaries established in the following manner:

1. The City of Long Beach, a municipal corporation, was first incorporated under the Municipal Incorporation Law in the year 1887; it was thereafter disincorporated; and again incorporated on December 6, 1897, under said Municipal Incorporation Law.

In the year 1907, said City duly adopted a Freeholder's Charter in accordance with Article XI, Section 8, of the California Constitution, which Charter was duly approved by the Legislature of the State of California on February 26, 1907. (1907 Stats., p. 1176.) Said Charter was amended in 1911 (1911 Stats., p. 1513), and in 1915

(1915 Stats., p. 1652). A new Charter was adopted by the City of Long Beach, approved by the California Legislature on April 14, 1921 (1921 Stats., p. 2054). Said Charter of 1921, as amended from time to time, is now in full force and effect.

By said Charter a Harbor Department was created under the management of the Board of Harbor Commissioners. By Section 225 of said Charter, as amended by the Legislature in 1925 (Stats. 1925, p. 1342), all navigable waters and all tide and submerged lands, filled or unfilled, situated below the line of mean high tide within the limits of the City of Long Beach and within its Harbor District, are placed in the possession and under the control of said Board of Harbor Commissioners.

By Section 229a of said Charter, it is declared that:

> "All tide lands and submerged lands within the harbor district, whether filled or unfilled, now owned or hereafter acquired by the City of Long Beach, are hereby declared to be required for use for purposes in connection with, or for the promotion and accommodation of commerce, navigation and fishery and shall, except as hereinafter provided continue to be withheld for such purposes. It shall be unlawful to grant, sell, convey, alienate, transfer, or otherwise dispose of, except as herein provided, any part of or any interest in the water front, tide lands, submerged lands, or appurtenances thereto belonging, owned, controlled, possessed or held by the City of Long Beach in the harbor district; provided that such grants of such land may be made to the State of California or to the United States of America for public purposes when authorized by a majority vote of the qualified voters of the City, voting upon the question of authorizing any such grant at an election."

Section 229 of said Charter authorizes said Board of Harbor Commissioners to grant franchises and permits to use the water frontage in the Harbor District for purposes connected with commerce, navigation and fishery for periods not exceeding 30 years and subject to specified conditions.

2. The southerly boundary of the City of Long Beach, as established by the original Acts of Incorporation of the City, and by the successive Charters, including the present Charter of said City, has continuously been fixed and established as extending three miles into the Pacific Ocean between the easterly and westerly boundaries of said City. The present Charter, in describing the boundary of the City, establishes the easterly boundary line of the City of Long Beach and proceeds with the description as:

> ". . . the prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly"

of the westerly boundary line of the City of Long Beach on Terminal Island. (Stats. 1921, p. 2054.)

The easterly and westerly boundary lines of the City of Long Beach have been changed and altered from time to time until fixed and established as in the present Charter of said City.

(II)

The State of California made grants of tide and submerged lands to the City of Long Beach in the following manner:

1. On May 1, 1911, the State granted to the City of Long Beach all tide and submerged lands situated within the boundaries of said City, in trust for harbor and park purposes. (1911 Stats., page 1304.) Said legislative grant was amended by the 1925 Legislature (1925 Stats., page 235) and by the 1935 Legislature (1935 Stats., page 793).

2. Said grant of tide and submerged lands has heretofore and in the year 1938, been adjudicated by the Supreme Court of the State of California to have conveyed to the City of Long Beach the fee simple title to all tide and submerged lands within its city boundaries, including all oil and gas and other minerals lying in and under said tide and submerged lands, upon the trusts and conditions set forth in said statute, with the State of California reserving certain interests therein in the event of breach of the trusts or conditions set forth in said statute; and holding that the City of Long Beach has a right thereunder to extract oil and gas in and under said tide and submerged lands by and through operating agreements, and to own, hold and use the proceeds therefrom for harbor and park purposes in accordance with the Charter of the City of Long Beach. (*Marshall v. City of Long Beach* (1938), 11 Cal. (2d) 609, 82 P. (2d) 362). The California Supreme Court there held (p. 614), that:

> "It is established law that the state became the owner of tidelands in fee simple upon its admission into the union, holding them subject to the public trusts for navigation, commerce and fishing (*Shively*

v. Bowlby, 152 U. S. 1; *Borax Consolidated v. Los Angeles,* 296 U. S. 10); that it likewise became owner of the minerals therein (*Boone v. Kingsbury,* 206 Cal. 148, 170); and it should reasonably follow that it has the power to grant these lands to municipalities, subject to those same trusts."

(III)

The City of Long Beach constructed its Outer Harbor in the Pacific Ocean and Bay of San Pedro, and the United States of America actively participated therein, as follows:

1. In the year 1924 the City of Long Beach established a program for the construction of the Long Beach Outer Harbor to be located entirely seaward of the line of ordinary high tide along the ocean shore of the Harbor District of Long Beach. Said Harbor District was an area bounded on the east by the westerly line of the Los Angeles County Flood Control Channel and its prolongation into the Pacific Ocean, and on the west by the City of Long Beach boundary line on Terminal Island and its prolongation into the Pacific Ocean.

2. Said plan for the development of the Long Beach Outer Harbor, adopted in the year 1924 as aforesaid, was a part of a larger plan for the improvement, rearrangement and enlargement of the entire Long Beach Harbor, including its Inner Harbor, as well as its Outer Harbor; and also for the enlargement and improvement of the Connecting Channel (Cerritos Channel) between the Long Beach Inner Harbor and the Los Angeles Inner Harbor; and including the extension of the outer breakwater in the Pacific Ocean and the Bay of San Pedro.

3. An Inner Harbor at Long Beach had been developed mainly by private interests commencing in the year

1905, by the construction of (i) an Entrance Channel at the mouth of the Old San Gabriel River where it emptied into the Pacific Ocean and the Bay of San Pedro, (ii) a Turning Basin adjoining said Entrance Channel, (iii) Channels Nos. 1, 2 and 3 extending easterly and northerly from said Turning Basin, and (iv) a shallow Connecting Channel with the Inner Harbor of Los Angeles (then Wilmington).

4. This 1924 improvement project had been the subject of investigations and proceedings, not only by the people of the City of Long Beach and the City of Los Angeles, but also by the United States War Department, through its Secretary of War and Chief of Engineers, its Board of Engineers for Rivers and Harbors, its Division Engineer, and its District Engineer at Los Angeles.

5. On March 21, 1924, a hearing was held on the subject of said project by the United States Board of Engineers for Rivers and Harbors at Los Angeles, at which representatives of the cities of Long Beach and Los Angeles and others appeared and gave testimony, as contained in House Document No. 349, 68th Congress, First Session, pp. 52-92.

6. A written report on said subject was submitted to the Chief of Engineers of the United States Army, War Department, by the United States District Engineer at Los Angeles, California, on April 15. 1924, pursuant to instructions contained in the River and Harbor Act of Congress, approved September 22, 1922. Said report set forth the details of the proposed plan of improvement for the Long Beach and Los Angeles Inner and Outer Harbors. In this connection, said report considered the advisability of Congress appropriating funds for the extension of the Los Angeles Outer Harbor breakwater to pro-

tect the Long Beach Outer Harbor and entrance to its Inner Harbor. The District Engineer there set forth the estimated cost of extending the breakwater a distance of approximately three miles and recommended that, as the City of Long Beach would receive direct benefits resulting from the breakwater extension in the protection not only of its ocean Entrance, but also of reclaimed submerged areas along the ocean shore, it would be equitable for the City of Long Beach, as well as the City of Los Angeles, to be required to share in the cost of the construction of the breakwater extension. In stating the benefits to the City of Long Beach in the reclamation of submerged lands in its Outer Harbor, the District Engineer stated that the City of Long Beach would own the title to this reclaimed submerged land and stated what his estimate of the value of such lands of the City of Long Beach would be, reporting, in part (House Document No. 349, *supra,* pp. 46-47), that:

> "The City of Long Beach would receive protection for its ocean entrance and for large areas of valuable land that it could reclaim and *to which it would have title;* possible westward travel of silt to block its ocean entrance; and an eastern bulkhead would be formed by the breakwater, for land reclaimed east of the ocean entrance. . . . In the case of both Long Beach and Los Angeles, they would not have to resort to inland development at greater cost than for development in the outer harbor under protection of the breakwater. . . . Land on the south shore of Terminal Island can be reclaimed very cheaply, as incidental to dredging operations in the inner harbors. Between Fish Harbor

[on the ocean side of Terminal Island in the City of Los Angeles] and the silt diversion channel [being the easterly boundary of the Long Beach Outer Harbor District] under protection of the breakwater extension, *perhaps 1,000 acres could be so reclaimed. A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1,000 acres. Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.* That land would, of course, be valuable even without the breakwater protection; but its development by slips and piers on the ocean side would largely enhance its commercial value. For such development, however, a protecting breakwater would be needed."

7. The Chief of Engineers submitted to the Secretary of War, for transmission to Congress, the report of the District Engineer dated April 15, 1924. The Chief of Engineers there recommended to the Secretary of War and to the Congress that the Congress adopt the project for the improvement of the Long Beach and Los Angeles Inner and Outer Harbors and the extension of said breakwater, at a total estimated cost for the project of $17,000,000, of which the United States would be required to furnish $10,000,000 with nominal maintenance. The Chief of Engineers then recommended an initial appropriation by Congress of $2,000,000, and further recommended that if the City of Long Beach and the City of Los Angeles gave assurance that they would assume one-half of the initial cost estimated at $2,400,000, the breakwater would be built on the site recommended by the District Engineer.

The Chief of Engineers advised the Secretary of War and the Congress in his said report that:

> "Extension of the breakwater is considered desirable as a means of protection for terminals planned to be developed on the south side of Terminal Island, * * * the construction of piers in the outer harbor is a part of a plan prepared by local interests for comprehensive port development. * * * *The District Engineer believes that the local benefits which would result from the reclamation of land on Terminal Island,* under protection of the breakwater, make it proper for local interests to bear a large part of the cost of the breakwater construction." (House Document No. 349, *supra,* pp. 2-3.)

The Chief of Engineers then recommended to the Secretary of War and to Congress, in said Report, that the project of improvement be adopted by the United States through its Congress and appropriations therefor be made in accordance with the recommendations of the District Engineer, as aforesaid, upon certain conditions specified by the Chief of Engineers. The conditions recommended by the Chief of Engineers respecting the Long Beach Outer Harbor were that (i) the City of Long Beach and the City of Los Angeles contribute half of the cost of the breakwater, estimated at fourteen million dollars, with funds being made available by the cities annually in amounts equal to federal appropriations for the breakwater; and (ii) the City of Long Beach make provision satisfactory to the Chief of Engineers and the Secretary of War, before any federal funds are expended on the

breakwater, for the construction by Long Beach of terminal facilities in the Long Beach Outer Harbor east of the main Long Beach Entrance Channel, such terminal facilities to have a transshipment capacity of at least one million tons per year of general cargo. (House Document No. 349, *supra,* p. 4.)

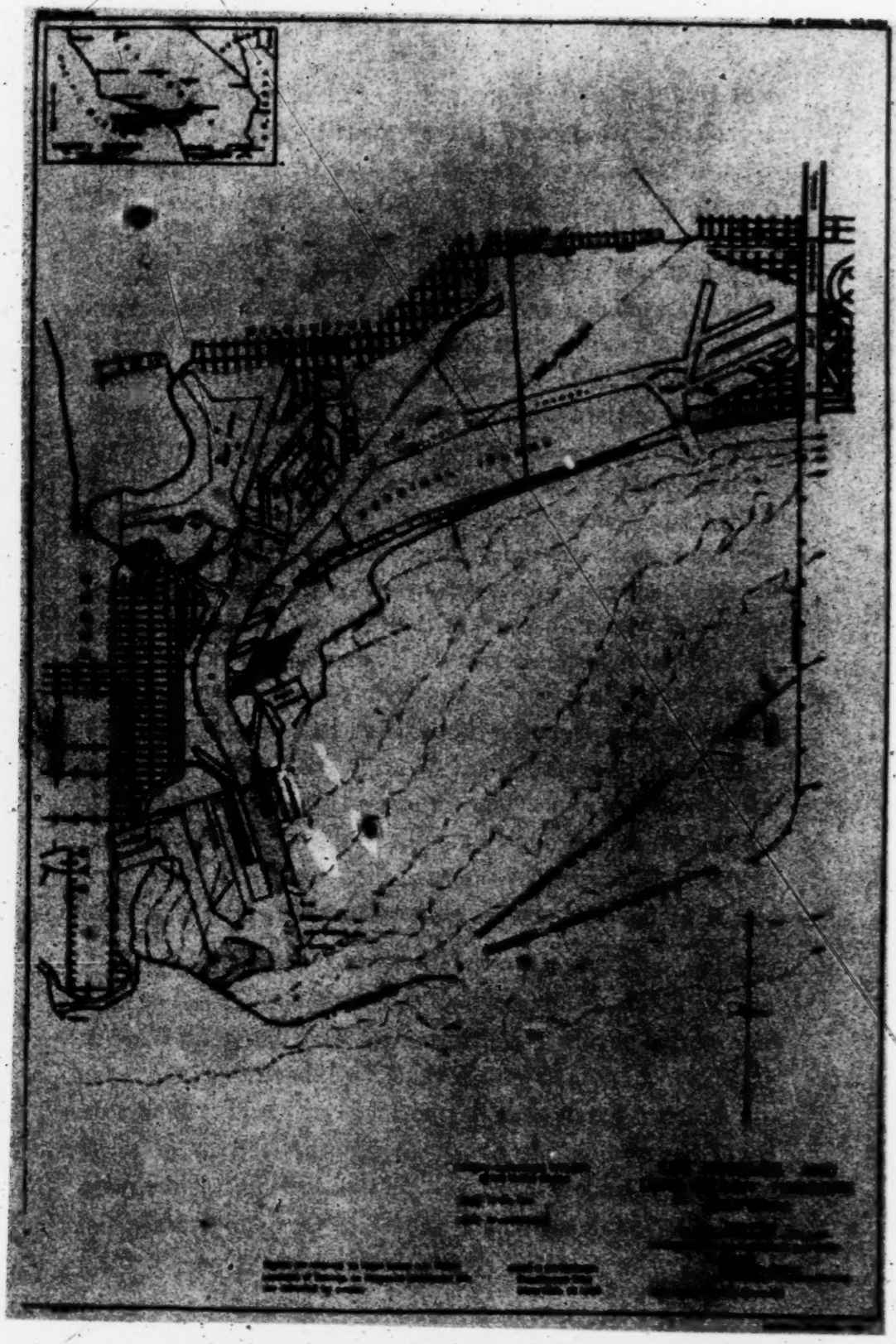
8. By Act of March 3, 1925 (43 Stats., Ch. 467), Congress adopted the project as recommended by the Chief of Engineers, as aforesaid, for the improvements of the Inner and Outer Harbors of Los Angeles, which improvements were to be made under the direction of the Secretary of War and under the supervision of Chief of Engineers in cooperation with the Cities of Long Beach and Los Angeles. Said Act provided, in part:

> "* * * In accordance with the reports submitted in House Document Number 349, Sixty-Eighth Congress, First Session, and subject to the conditions set forth in said document: Provided, that the amount hereby authorized to be expended shall not exceed the sum of $6,500,000: Provided further, that the Secretary of War is hereby authorized to allow credits, in such amount as may be determined as equitable by the Chief of Engineers to local interests for such work as they may hereafter do in the construction of the breakwater if such work has been approved by the Chief of Engineers prior to its commencement and is in accordance with this project."

By such enactment, Congress adopted the Reports of the District Engineer and Chief of Engineers contained in said House Document Number 349, as aforesaid, and like-

wise adopted that portion thereof asserting and recognizing the title and ownership of the City of Long Beach in and to the reclaimed submerged lands on Terminal Island and in the Outer Harbor east of the Long Beach Entrance Channel as directly and positively stated by the District Engineer and Chief of Engineers in said Reports.

9. The map set forth next following, being a copy of the map prepared by the United States District Engineer at Los Angeles, accompanying his said Report of April 15, 1924, contained in said House Document No. 349, as aforesaid, illustrates the proposed improvements recommended to Congress in said House Document No. 349, as aforesaid, and particularly shows the proposed breakwater extension joining the shore at the "Silt Diversion Channel", being the then eastern extremity of the Long Beach Harbor District. This map also shows the boundary line of the westerly boundary of the City of Long Beach on Terminal Island, such line extending into the Pacific Ocean and Bay of San Pedro from the approximate middle of Terminal Island. The submerged lands proposed to be reclaimed from the Ocean, to which Long Beach was thus declared to be the owner, lie easterly of said boundary line on Terminal Island. These are the proposed reclaimed lands which the District Engineer and Chief of Engineers advised Congress in said Reports would be protected by the proposed breakwater extension and would benefit the owners thereof, to wit, the City of Long Beach and the City of Los Angeles, respectively. A copy of said map is as follows:



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10. In order to furnish the cooperation required from the City of Long Beach, by the Reports of the District Engineer and Chief of Engineers in House Document No. 349, as aforesaid, the City of Long Beach on May 8, 1924, held a special municipal election and obtained authority of its people to issue, and the City did thereupon issue, bonds in the amount of five million dollars ($5,000,000) for specified improvements in the Inner and Outer Harbors of the City of Long Beach. Said specified improvements included the construction of jetties and moving of existing jetties in the Outer Harbor; protection of the Long Beach Harbor Entrance and Outer Harbor through the breakwater extension; and the construction, completion and repair of docks, wharves, piers, landings, warehouses and other works necessary for the improvement of said Harbor. The City of Long Beach thereupon sold the bonds thus authorized and received from the sale thereof approximately five million dollars ($5,000,000). The total amount of said bond proceeds was disbursed and expended by the City of Long Beach in the several years following the issuance of said bonds exclusively for said harbor improvements, such expenditures being for rock work, dredging, reclamation of Terminal Island and elsewhere in the Outer Harbor, structures, and facilities.

11. The City of Long Beach submitted an application to the United States War Department for a permit to build the breakwater in conformity with the breakwater extension approved by Congress on March 3, 1925, as aforesaid. The City of Long Beach stated in said application that it was the owner of the submerged lands upon which said breakwater was to be erected. Said permit was granted by the War Department on March 7, 1925.

12. On March 10, 1925, the Chief of Engineers of the War Department directed the District Engineer at Los Angeles to notify the City of Long Beach that Congress had provided, as above quoted from the Act of March 3, 1925, that if the City of Long Beach wished to make a claim for credit, as provided in said Act of Congress, it must make formal request to that end in advance of the work and must further submit in advance a request for approval of Chief of Engineers of all plans, specifications and contracts covering the work for which credit would be claimed by the City. The City of Long Beach complied with these directions of the Chief of Engineers and furnished him with plans, specifications and contracts covering the construction work of said breakwater extension in advance thereof.

13. The City of Long Beach thereupon caused to be constructed at its own expense a 4,200 foot length of breakwater extending on a prolongation of the westerly line of "Silt Diversion Channel" from the shore approximately three-quarters of a mile into the Pacific Ocean and the Bay of San Pedro. The total cost to the City of Long Beach of such 4,200 foot length of breakwater was $906,493. The City thereupon reported to the District Engineer that said breakwater had been completed in accordance with the terms of the War Department permit, and said District Engineer on October 11, 1928, so reported to the Chief of Engineers.

14. The foregoing detailed facts concerning the construction of said breakwater by the City of Long Beach were reported to the Committee on Rivers and Harbors of the House of Representatives of Congress in accordance with the Resolution of said Committee adopted on February 25, 1927, as quoted in House Document No. 33,

Seventy-first Congress, Second Session, pages 21-22. Said Committee Resolution directed the Board of Engineers for Rivers and Harbors of the War Department to review the Reports submitted in House Document No. 349, *supra*,

> "with a view to determining the advisability of modifying or waiving any of the conditions of local cooperations required as a precedent to the federal government's expending funds for the construction of the breakwater." (House Document No. 33, *supra*, page 11.)

Pursuant to said Committee Resolution, said Board of Engineers made its investigation and report and recommended to said Committee of Congress, which recommendation was approved by the Chief of Engineers in his Report to said Committee of Congress on April 11, 1930, that the requirement for the City of Long Beach and the City of Los Angeles to share half of the cost of construction of the breakwater extension should be waived in view of the cooperation already given by said cities. Said report and recommendation to said Committee of Congress stated in part:

> "While the Board believes that the original recommendation for breakwater construction was equitable, it states that the provisions of local cooperation which have already been carried out by the cities of Los Angeles and Long Beach may be considered sufficient to justify the United States in assuming the entire cost of the breakwater construction now proposed." (House Document No. 33, *supra*, page 3.)

15. By Act of July 3, 1930 (46 Stats., Chap. 847), Congress adopted the recommendations of said Board of Engineers and said Chief of Engineers contained in said Document No. 33 and thereby waived the conditions that

the City of Long Beach further share in the cost of the breakwater extension. Said Act of Congress in this respect provided in part that:

> "The modification of the existing project recommended in the reports submitted in * * * Rivers and Harbors Committee Document No. 33, Seventy-first Congress, Second Session, are hereby adopted and authorized subject to the condition set forth in the said documents."

16. In order to comply with the conditions specified in said House Document No. 349, the City of Long Beach constructed, in its Outer Harbor east of the main Long Beach Entrance Channel, terminal facilities having a cargo capacity of at least one million tons per year. Construction of such facilities was one of the conditions imposed by the Federal Government for the extension of said breakwater, as aforesaid. In this connection defendant alleges that:

> (a) In the year 1928 the City of Long Beach held a special municipal election to obtain the authorization from its people to issue, and it thereafter did issue, bonds in the sum of approximately $2,700,000 for the purpose of obtaining proceeds to enlarge and complete the improvement and facilites in the Long Beach Outer Harbor. Pursuant thereto, said bonds were sold and proceeds in the sum of approximately $2,700,000 were received by the City.
>
> (b) Said proceeds were disbursed in the several years following said election for the exclusive purpose of constructing Piers A and B in the Outer Harbor at a cost of approximately $1,350,000; for dredging a 35-foot depth channel in the Outer Harbor to connect with the Outer Harbor Entrance Channel

Fairway to the 35-foot depth of water in the Pacific Ocean and Bay of San Pedro; and for other harbor improvements.

(c) The foregoing expenditures of and improvement made by the City of Long Beach in its Outer Harbor were reported on September 30, 1929, by the District Engineer at Los Angeles to the Chief of Engineers, and by the Chief of Engineers to the Committee on Commerce of the United States Senate on April 11, 1930, as contained in Senate Document No. 130, Seventy-first Congress, Second Session, page 19, where it is stated that:

> "In February, 1929, the City of Long Beach entered into a contract for the construction of two overseas piers in the outer harbor. The improvement will provide three covered berths and one open wharf costing, when completed, approximately $2,130,000 * * *. The completion of these piers will be in compliance with condition (g) precedent to the extension of the existing Government breakwater to Long Beach. See page 4, House Document 349, Sixty-eighth Congress, First Session."

(d) From 1926 to 1930, the City of Long Beach dredged channels in the Outer Harbor to the 35-foot depth to afford deep draft approach to Piers A and B in its Outer Harbor. The materials obtained from such dredging were used to fill in and reclaim the submerged lands at Piers A and B and elsewhere in the Outer Harbor.

17. Congress was advised of these facilities improvements in the Outer Harbor in the report of the District Engineer to the Chief of Engineers, dated January 16, 1930, and by the Chief of Engineers reported to the Committee on Commerce of the United States Senate on April 11, 1930, in said Senate Document No. 30, *supra*, at pages 30-32, where it is reported, in part:

> "Outside the molls [located at the extension of Long Beach Entrance Channel] the channel runs due South [into the Pacific Ocean and Bay of San Pedro] for 700 feet, to the 40-foot contour. It was dredged [by the City of Long Beach] in 1926 to a depth of 40 feet for a width of 100 feet in the center, and to a depth of 35 feet for a width of 100 feet on each side, making a total channel width of 300 feet. Shoaling since 1926 has reduced the controlling depth to 34 feet. * * * The City has let a contract to dredge the approach channel and slip at Pier A and Pier B in the outer harbor to 35 feet. These piers will be used for general cargo. * * * Long Beach has already let a contract for this work at a cost of about $200,000. The dredged material will be used to make the fills at Piers A and B. The only question to be decided, therefore, is whether or not the federal government ought to take over the maintenance of these channels."

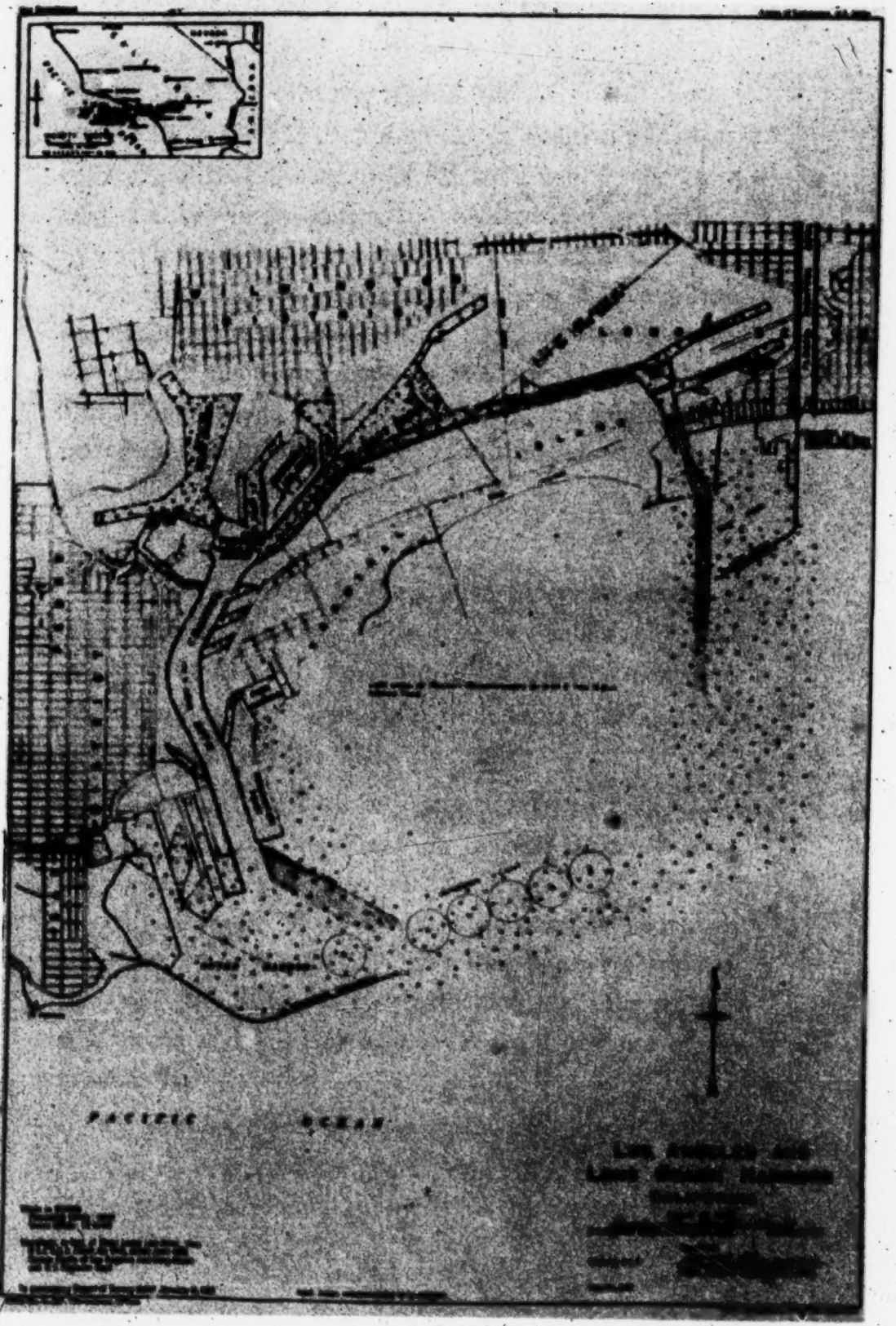
The District Engineer and Chief of Engineers recommended to the Senate Committee that such maintenance work be borne by the City of Long Beach and not at the

expense of the Congress (Senate Document No. 130, *supra*, pages 4, 32).

18. The Congress adopted the recommendations of the Chief of Engineers contained in said Senate Document No. 130 in its Act of July 3, 1930 (46 Stats. page 847), where Congress provided, in part, that:

> "The modification of the existing project recommended in the reports submitted in Senate Document No. 130, Seventy-First Congress, Second Session * * * are hereby adopted and authorized subject to the condition set forth in the said documents."

19. The Long Beach breakwater extension, the bulkhead, fills, wharfs and sheds at Piers A and B in Long Beach outer harbor and the channels dredged in the outer harbor, as aforesaid, are depicted on the map prepared by the District Engineer of Los Angeles dated January 16, 1930, accompanying his said report of said date, which map is attached to said Senate Document No. 130, a copy of which follows.


PACIFIC OCEAN

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PAGE

20. The City of Long Beach has expended approximately $5,750,000 of capital outlay, in addition to the proceeds from the 1924 and 1928 Harbor Fund Bonds, aforesaid, for the improvement and construction of facilities in its Outer Harbor, between the years 1925 and 1945. These facilities include the construction of the Navy landing facilities owned by the City of Long Beach, erected on filled-in submerged lands in its Outer Harbor, for its Piers D and E and extension of Pier A, and facilities connected therewith, all located on reclaimed submerged lands in its Outer Harbor.

(IV)

Some of the grants to the United States of leases and other interests in and to the tide and submerged lands owned by the City of Long Beach, situated in the Pacific Ocean and Bay of San Pedro and in the Long Beach Outer Harbor, are the following:

1. The United States of America entered into a lease with the City of Long Beach on October 8, 1943, covering approximately 30 acres of submerged lands owned by the City of Long Beach in its Outer Harbor, commonly known as "Victory Pier." Said Pier is that portion of the Long Beach breakwater extending out into the Pacific Ocean and the Bay of San Pedro a distance of approximately 4,690 feet.

(a) Said lease was executed upon a form prepared by the United States of America, being its "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

(b) Said lease granted to the United States the right during the existence of said lease, at the cost and expense of the United States, to construct permanent and temporary facilities on and connected with said breakwater, including an earth fill, together with quay wall, bulkhead, rock revetments, approach fill, pavements, tracks, power and water lines and other incidental structures within an area therein described. The demised premises are located on the harbor side of said breakwater, and contain approximately 30 acres. Access is afforded thereto from the southerly line of Seaside Boulevard by way of Pico Avenue extended, and that portion of existing Pier A located in the Long Beach Outer Harbor easterly of the Transit Shed thereof. Said lease provides that the demised premises shall be used exclusively for storage and marine facility. The term of said lease was to end on June 30, 1947, or six months following the ratification by the United States Senate of a Treaty of Peace between the United States of America and its present war enemies, whichever is sooner. The rental is one dollar for the term thereof. The United States is granted an option to renew the lease for an additional five-year period for a rental of the additional sum of one dollar, with a proviso that no renewal of such lease should extend the period of occupancy of the demised premises beyond the termination of the state of war and two years thereafter. The lease provides that the City shall not be required to undertake any maintenance of facilities leased or constructed thereunder by the United States, nor shall the City be required to do any maintenance or dredging during the period of said

lease within the channels adjacent to the demised premises or the channels by which the demised premises are reached from the Entrance Fairway.

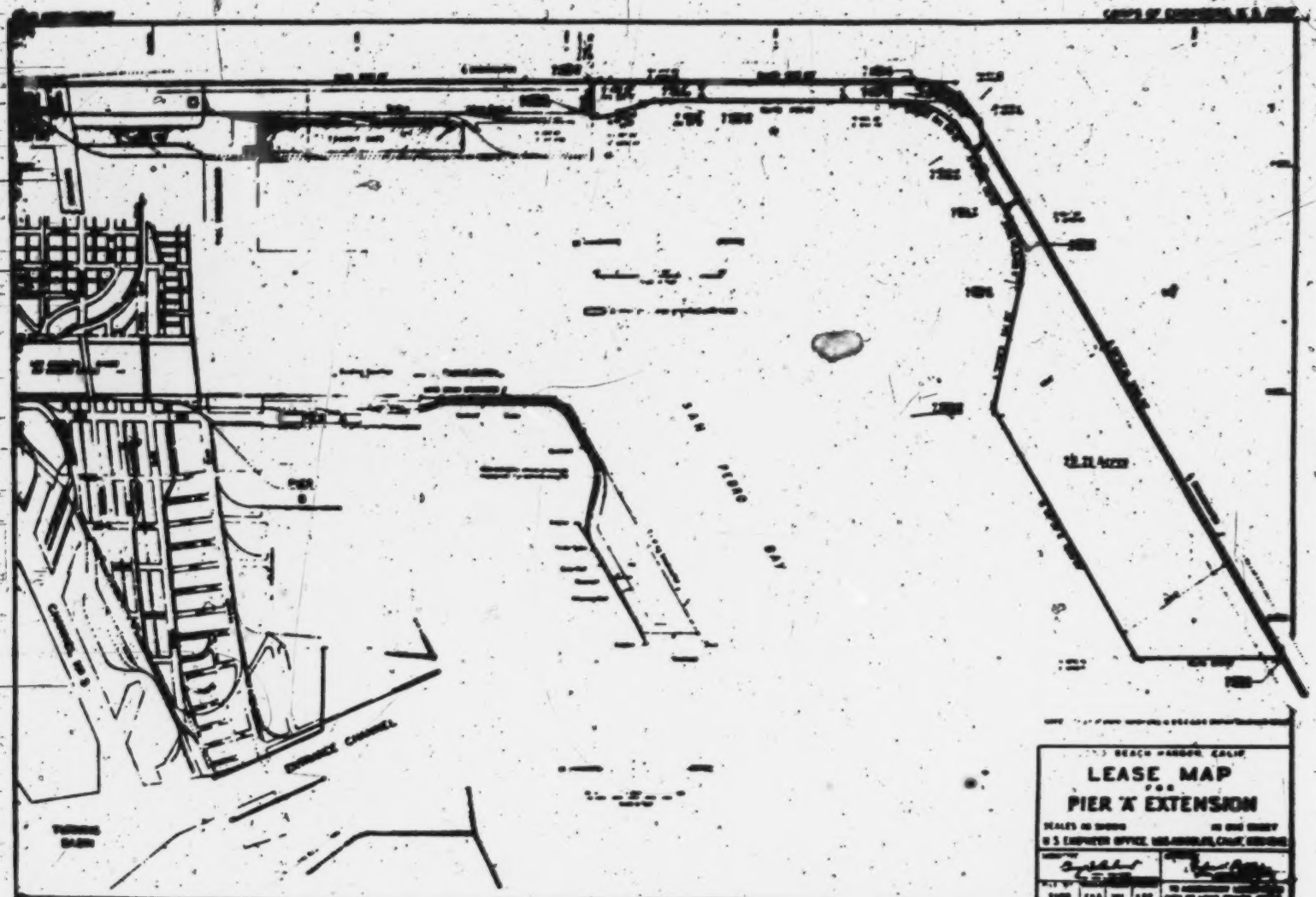
(c) The United States thereby agreed to construct its terminals on the demised premises to the lines, general arrangement and quality of construction as shown on designated drawings prepared by the United States District Engineer at Los Angeles and approved September 17, 1942, by the Long Beach Board of Harbor Commissioners.

(d) It is specifically agreed, in Paragraph 15 of said lease, that:

> "The Lessor [City of Long Beach] hereby agrees that the lessor will, upon termination, expiration or cancellation of the lease, purchase from the Government all permanent improvements and additions constructed by the Government in connection with the facility, at a price and upon terms of payment to be negotiated at the time of purchase."

(e) The United States went into possession of said 30 acre parcel of submerged lands in the Pacific Ocean and Bay of San Pedro under and pursuant to the terms of said lease, has at all times since remained in possession thereunder, and has constructed marine and storage facilities costing the United States in excess of $3,100,000.00.

The location of said demised premises in the Pacific Ocean and San Pedro Bay is depicted on a map attached to said lease as Exhibit A, a copy thereof being set forth as follows:


LEASE MAP
FOR
PIER 'A' EXTENSION

2. The United States of America by its Secretary of the Navy, Claude A. Swanson, entered into a written agreement accepting a "Revocable Permit" with the Board of Harbor Commissioners of the City of Long Beach on April 29, 1937, pursuant to Resolution No. 17 adopted by said Board of Harbor Commissioners. Said Resolution No. 17 declared that the

> "tide or submerged lands [are] not required at this time for purposes in connection with or for the promotion and accommodation of commerce, navigation and fishery,"

and authorized the Port Manager of the City of Long Beach to issue a Revocable Permit for the use of such lands, as well as other and additional lands, by the United States of America, for purposes therein set forth.

(a) By said Revocable Permit the City of Long Beach and its Board of Harbor Commissioners granted to the United States of America permission to use, in accordance with the terms, conditions and limitations contained in said permit, two parcels of tide and submerged lands in the Harbor District of the City of Long Beach for a term of one year ending on May 1, 1938.

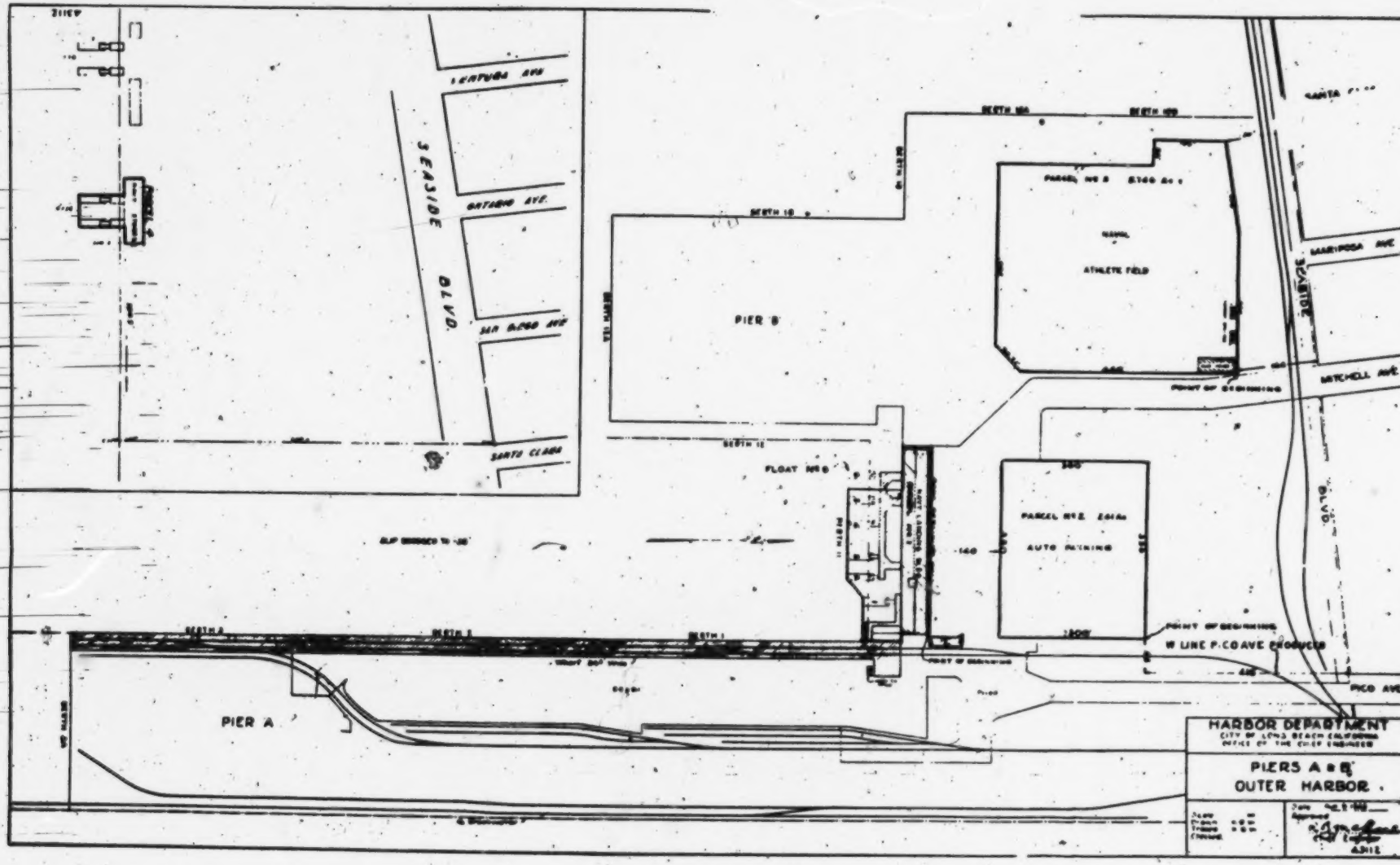
(b) Parcel No. 1 thereof consisted of all reclaimed lands, buildings, improvements and facilities forming what was generally referred to as "Navy Landing," on or attached to Berth No. 11, located between Piers A and B of the Long Beach Outer Harbor, reserving certain space to the City of Long Beach and portions of the buildings located thereon.

(c) Parcel No. 2 consisted of a 2.41 acre tract of reclaimed lands to be used for an auto parking area connected with said Navy Landing.

(d) Parcel No. 3, consisting of a 5.1 acre tract of submerged lands, is situated adjacent to Pier B, to be used for a naval athletic field.

(e) All three of said parcels are situated upon reclaimed submerged lands lying seaward of a line or ordinary high tide as it existed prior to reclamation and filling by the City of Long Beach, commencing in about the year 1924.

The locations of said three parcels are depicted on a map attached as Exhibit A to said Permit, and a copy thereof is set forth as follows:


SEASIDE BLVD.
SANTA CLARA
PIER B
ATHLETIC FIELD
PARCEL NO 8
PARCEL NO 9
AUTO MINING
FLOAT NO 8
PIER A
W LINE P.C.O AVE PRODUCED
POINT OF BEGINNING
MARIPOSA AVE
MITCHELL AVE
PICO AVE
HARBOR DEPARTMENT
PIERS A & B
OUTER HARBOR

(d) Said Permit provided

(i) that Parcel No. 1 thereof shall be used exclusively for loading and unloading personnel of the United States Navy and loading of supplies for such ships;

(ii) that Parcel No. 2 shall be used exclusively for parking automobiles belonging to United States Navy personnel or those authorized by the United States Navy;

(iii) that Parcel No. 3 shall be used exclusively for the playing and carrying on of athletics now engaged in by United States Navy personnel or persons permitted by the United States Navy;

(iv) that all uses permitted thereby must at all times be exercised in full compliance with the City of Long Beach Charter and all applicable laws;

(v) that the demised lands shall not be used for any purpose other than as set forth therein, and that in no event shall any of the lands be used for any purpose which shall interfere with commerce or navigation or be inconsistent with any of the

"trusts upon which any of said lands are or may hereafter be held by said City of Long Beach";

(vi) that the Permit was not assignable or transferable;

(vii) that it was subject to all rights-of-ways which at any time may be established by the Board of Harbor Commissioners;

(viii) that the land shall not be used in any way to interfere with any plan of harbor improvement adopted by the City of Long Beach;

(ix) "that upon the expiration of this permit, whether by revocation or otherwise, all wharves, piers, docks, slips, bulkheads, sea wall and channels, and all other permanent structures or improvements constructed or maintained hereunder, shall be or become the property of said City of Long Beach without compensation."

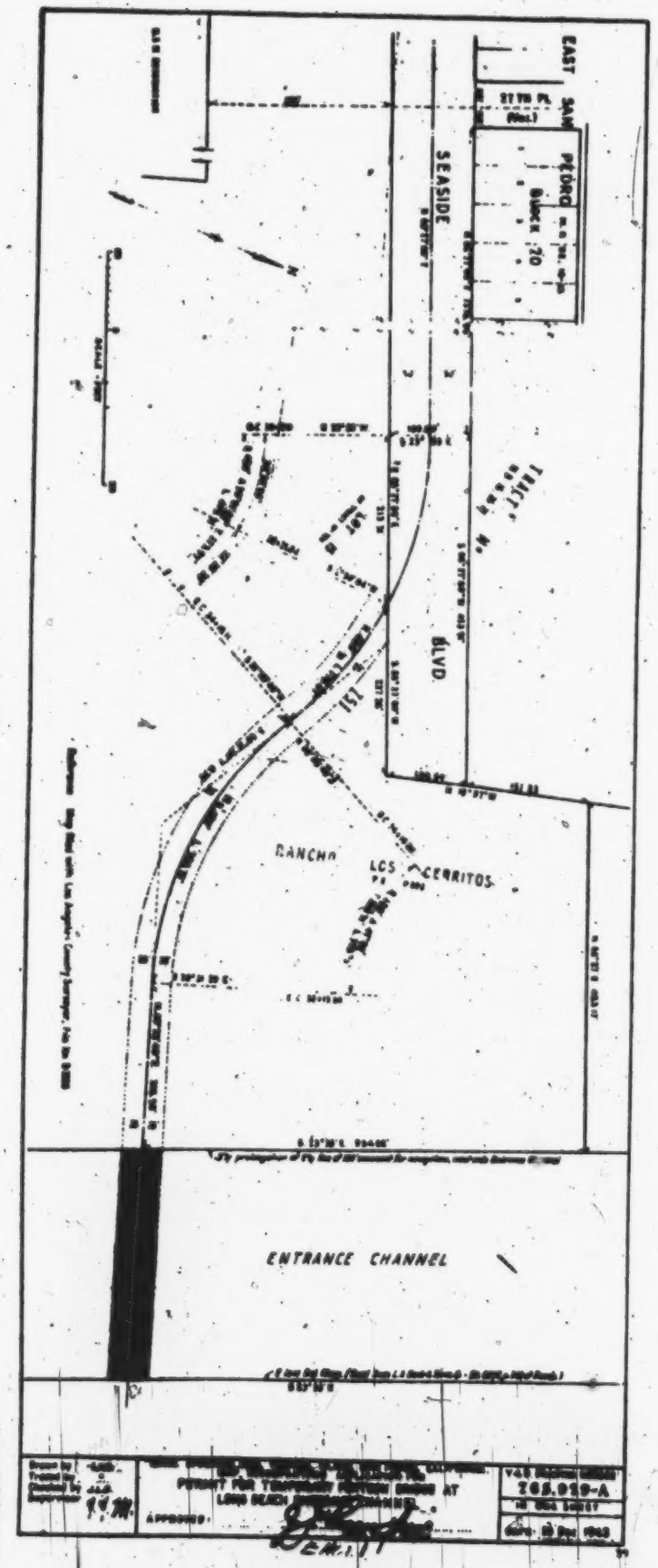
(e) Said Permit was accepted in writing by the United States, by its Secretary of the Navy, on April 13, 1937.

(f) Said Revocable Permit was renewed for a term ending on April 30, 1939, by Revocable Permit issued pursuant to the Board of Harbor Commissioners Resolution No. 49, and was accepted in writing on June 14, 1938 by the United States of America, by William P. Leahy, Acting Secretary of the Navy, upon substantially the same terms and conditions as set forth in the original Permit above mentioned.

(g) Said Revocable Permit was further renewed for a term ending on April 30, 1940, pursuant to Board of Harbor Commissioners Resolution No. 103 and was accepted in writing by the United States of America, by William D. Leahy, Acting Secretary of the Navy, on June 15, 1939, upon substantially the same terms and conditions as the original Revocable Permit, above mentioned.

3. The United States of America, by and through its Navy Department, on November 24, 1943, made written application to the Long Beach Board of Harbor Commissioners for a right to use portions of the submerged lands in the Long Beach Outer Harbor at the Entrance Channel for abutments for a proposed Retractable Pontoon Bridge over and across the Long Beach Harbor Entrance Channel. Subsequently, on December 22, 1943, the United States of America, by written modification, requested an easement for a temporary Retractable Pontoon Bridge across said Entrance Channel. Pursuant thereto, the Long Beach Board of Harbor Commissioners adopted its Ordinance No. H. D. 120, on January 27, 1944, and executed and delivered to the United States of America a Permit covering the parcels of submerged land as requested by the United States, as aforesaid, for the purpose of installing, maintaining and operating a Retractable Pontoon Bridge over and across said Entrance Channel upon the terms and conditions therein specified. The United States of America went into possession of said parcels described in said Ordinance No. H. D. 120, and are now in possession thereof under and pursuant to said written lease and permit.

A copy of the map accompanying said application of the United States for such Permit, is set forth as follows:


EAST
SEASIDE
PEDRO
BLOCK 20
BLVD
RANCHO
LOS CERRITOS
ENTRANCE CHANNEL
PERMIT FOR TEMPORARY
LONG BEACH
APPROVED
V&S
168,919-A

4. On September 30, 1935, the Long Beach Board of Harbor Commissioners, pursuant to Harbor Ordinance No. 15, executed a written lease to the Army and Navy Young Men's Christian Association, as Lessee, of a site located upon reclaimed submerged lands adjacent to Pier A, for the construction of the Army and Navy YMCA Building.

(a) By said Harbor Ordinance No. 15 the Board of Harbor Commissioners determined that the demised premises, being artificially filled tide and submerged lands in the Harbor District of Long Beach are not required for use in connection with commerce, navigation or fishing, and that the granting of said lease of submerged and tide lands to the International Committee of Young Men's Christian Associations for the erection and maintenance of buildings and equipment for conducting an Army and Navy YMCA, for a term of 40 years, at a rental of $1 per year, subject to readjustment of rental every 10 years, would not be inconsistent with the trusts upon which the said lands are held by the City of Long Beach.

(b) The lease was granted upon specified terms, conditions, covenants and limitations for the exclusive purpose of maintaining an Army and Navy YMCA. Said lease provided that upon expiration of the term of the lease, the City of Long Beach should have the option of keeping all permanent structures or improvements constructed or maintained thereunder by Lessee, without compensation to Lessee, or to require Lessee to remove the same and leave the demised premises in as good condition as when received by it hereunder.

(c) On October 31, 1941 the United States of America, through its War Department, made written request to the City of Long Beach to lease to the United States the

southerly 126 feet of the larger parcel of land then under lease to the Army and Navy YMCA, as aforesaid. Pursuant thereto and on February 26, 1942, the Board of Harbor Commissioners approved and gave its consent to a partial assignment to the United States by Lessee under said Harbor Ordinance No. 15, said approval and consent to said assignment being conditioned upon said assignee being bound by and agreeing to carry out and perform all the terms, provisions, conditions and covenants of said lease granted by said Harbor Ordinance No. 15 in so far as the lands described in said assignment are concerned.

(d) Pursuant to said consent and approval of such assignment, the United States did, by and through its Federal Works Agency, request and obtain an opinion from the City Attorney of the City of Long Beach on July 7, 1942 concerning title to the demised premises, in which said City Attorney advised said Federal Works Agency in writing that the City of Long Beach is the sole and exclusive owner of said real property in fee simple, stating that

> "I believe that I am entirely familiar with the facts as well as the status of the law concerning legal title to the real property subject to the lease made by the City of Long Beach, as Lessor, to the International Committee of Young Men's Christian Associations, as Lessee pursuant to Harbor Ordinance No. 15, an ordinance of the Board of Harbor Commissioners of the City of Long Beach adopted September 30, 1935, a partial assignment of which was consented to and approved by the Board of Harbor Commissioners on or about February 26, 1942. I am of the opinion that *the City of Long Beach is the exclusive and sole owner of said real property in fee simple.*"

(e) Pursuant to said consent and assignment of lease, as aforesaid, the United States entered into possession of said demised premises and constructed its improvements on and upon the premises described in said partial assignment and have ever since been and are now in possession thereof.

(f) The United States of America, by and through its Federal Works Agency, has paid to the City of Long Beach the rental required by said lease, for and on behalf of said assignee, the United States of America.

5. On October 28, 1943, Contract No. W-04-353-Eng-65 was entered into between the United States of America and the City of Long Beach wherein it was recited

(i) that the United States had undertaken, as a specific part of the maintenance and improvement of existing river and harbor works at Los Angeles and Long Beach Harbors, the dredging of the mouth of the Los Angeles River Silt Diversion Channel as it entered the Pacific Ocean and the Bay of San Pedro;

(ii) that the dredging was authorized by the Act of Congress of October 17, 1940;

(iii) that the City of Long Beach had requested, in connection with the Long Beach Harbor development, the dredging materials be deposited in certain specified areas in the Los Angeles Outer Harbor; and

(iv) that the City would furnish, at no cost to the Government, the areas upon which the dredged materials should be deposited, and agreed to save the United States harmless from any damages or claims arising out of performance of the contract.

(v) It was thereupon agreed that the City of Long Beach would construct and maintain all levees necessary to confine the dredged materials deposited in the Pier A, Pier D and the East Fill as shown on designated drawings. In consideration of the excess cost to the United States arising under said contract, the City of Long Beach agreed to pay the United States for the increased cost, plus a specified amount for overhead and engineering; the total excess cost to the United States which the City agreed to pay being estimated at the sum of $175,000, which said sum the City agreed to pay upon acceptance and approval of said contract.

Said dredging work was performed by the United States. The dredged materials were deposited in the areas designated, including "Area J," immediately adjacent to and easterly of the Long Beach breakwater and Pier A adjacent thereto, hereinafter more particularly referred to. The City of Long Beach duly paid the said sum of $175,000 to the United States of America therefor.

6. On March 15, 1939 the City of Long Beach entered into four Drilling and Operating Contracts with the Long Beach Oil and Development Company, a corporation, covering parcels therein described as "W," "X," "Y," and "Z." A similar Drilling and Operating Contract was entered into between the City of Long Beach and the Long Beach Oil and Development Company on January 2, 1942 covering the parcel therein described as "Z-1," and a sixth Drilling and Operating Contract was entered into between the same parties on August 3, 1944, covering the parcel therein described as "J."

(a) Said parcel W is situated Westerly of the Entrance Channel, and consists entirely of filled and reclaimed sub-

merged land, and extends into the Pacific Ocean and the Bay of San Pedro approximately ½ mile from the line of ordinary high water prior to such filling and reclamation.

(b) Said Parcel X lies immediately east of and adjacent to the East line of the Long Beach Entrance Channel and likewise extends approximately ½ mile into the Pacific Ocean and the Bay of San Pedro seaward of the line of ordinary high water prior to the reclamation and filling of the former submerged lands.

(c) Parcel Y lies East of and adjoins said Parcel X; Parcel Z lies Easterly of said Parcel Y; both of said parcels being reclaimed tide and submerged lands.

(d) Parcel Z-1 lies immediately East of and adjacent to Long Beach breakwater and Pier A, and extends into the Pacific Ocean and Bay of San Pedro in excess of one-half mile from the line of ordinary high water prior to reclamation and filling of said area.

(e) Parcel J lies East of said Parcel Z and likewise extends approximately one-half mile into the Pacific Ocean and Bay of San Pedro from the line of ordinary high water.

(f) Said Long Beach Oil and Development Company, pursuant to said six Drilling and Operating Contracts with the City of Long Beach, has drilled and is now operating and producing from 193 oil and gas wells surfaced upon drill sites located within said Parcels W, X, Y, Z, Z-1 and

J, respectively. The bottom of many of said wells is located some distance seaward from the surface location, having, in many instances, been slant drilled in accordance with the terms of said contracts. Many of said wells are producing from well-holes bottomed in the so-called Terminal or Ranger Zones at points the vertical surface location of which is distant approximately one mile into the Pacific Ocean and the Bay of San Pedro from the shore line thereof.

(g) The City of Long Beach has received, since the year 1939, from said Long Beach Oil and Development Company, as net revenue to the City from proceeds of oil and gas produced from said 193 wells, to September 30, 1945, the sum of approximately $14,720,000.

(h) Under Section 229-X of the Charter of the City of Long Beach, added by amendment in the year 1937 (1937 Stats. p. 2939), as amended, all net revenues derived by the City of Long Beach and its Board of Harbor Commissioners from the proceeds of oil and gas produced from in, or under the tide and submerged lands of the City, are required to be deposited into the Harbor Revenue Fund and used exclusively for harbor development, improvement, maintenance, and other harbor purposes.

All funds thus derived from the proceeds of the oil and gas produced from said 193 wells have been and the same are now being devoted exclusively to harbor purposes, including the payment of principal and interest

on the 1924 and 1928 Harbor Bonds issued by the City of Long Beach for the creation and development of its Outer and Inner Harbors, as hereinabove alleged.

(i) In the year 1939 the Committee on Public Lands and Surveys of the United States Senate, 76th Congress, First Session, was fully informed of the four Drilling and Operating Contracts executed on March 15, 1939, between the City of Long Beach and Long Beach Oil and Development Company aforesaid, and of the revenues being or to be derived therefrom, the proposed location of the wells that were then being drilled thereunder as being situated and bottomed and to be produced and drilled from, in and under tide and submerged lands of the City of Long Beach in its Outer Harbor; and likewise of the provisions of Section 229-X requiring all oil and gas revenues to be deposited in the Harbor Revenue Fund and to be used exclusively for harbor purposes; and copies of said contracts between the City of Long Beach and the Long Beach Oil and Development Company covering said Parcels W, X, Y and Z were filed with said Senate Committee and made a part of its records in the proceedings and hearings held from March 27 to March 30, 1939, inclusive. The then City Attorney for the City of Long Beach made a full and complete statement to said Senate Committee of the ownership of the City of Long Beach of the tide and submerged lands out to three miles into the Pacific Ocean and of a strip three miles wide along the Pacific Ocean; and of the basis of its title being deraigned from the State of California, the

owner thereof by virtue of its sovereignty, and a statement of the development for oil and gas purposes of said tide and submerged lands and of the provisions of Section 229-X of the Charter amendment of 1937 as aforesaid. Said City Attorney likewise advised of the expenditures that had been made over the years by the City of Long Beach and of the numerous recognitions by the United States, its various branches, departments and agencies, of the ownership of the City of Long Beach of the tide and submerged lands within its boundaries, extending three miles out into the Pacific Ocean. [Hearings before the Committee on Public Lands and Surveys U. S. Senate, 76th Congress, First Session, SJ Resolution 83 and SJ Resolution 92 of March 27-30, 1939, inclusive, pages 281-330.]

Although the 76th Congress in the year 1939 had before it proposed resolutions calling for proceedings to declare the alleged ownership of the United States in and to the tide and submerged lands along the coast of the State of California, said resolutions were defeated, failed of passage in the Congress of the United States, and no action was taken or asserted by the Congress of the United States or any of its branches or agencies in the intervening six years until the filing of this complaint, despite the knowledge of Congress, gained at the hearings aforesaid, of the large expenditures made and being made by the State of California, the City of Long Beach, and other grantees and lessees of and from the State of California.

III.

City of Los Angeles.

(I)

The City of Los Angeles was established, its boundaries were fixed, and title to all tide and submerged lands within its boundaries were granted to it by the State of California, in the following manner:

1. The City of Los Angeles is a municipal corporation, chartered with a Freeholder's Charter in the year 1889 (Stats. 1889, p. 455), in accordance with Article XI, Sections 6 and 8 of the California Constitution. A new Charter of the City of Los Angeles was established in the year 1925 (Stats. 1925, p. 1024) as thereafter amended from time to time.

2. The City of Los Angeles is the legal successor of the Pueblo of Los Angeles organized in the year 1784 under the laws of the Kingdom of Spain; and likewise of the Pueblo of Los Angeles under the laws of the Republic of Mexico; and is likewise successor of City of Los Angeles as organized under the California Constitution of 1849 and by statute enacted by the legislature of the State of California in 1850 (Stats. 1850, p. 155) as amended from time to time.

3. The City of Los Angeles consolidated with the Town of Wilmington and the City of San Pedro on or about August 28, 1909, under the Consolidation Act of 1909. Said City of San Pedro was incorporated as the Town of San Pedro on or about March 1, 1888, and was reincorporated as a City of the Sixth Class on March 7, 1905, under the provisions of the Municipal Incorporation Act.

The Town of Wilmington was duly incorporated on December 27, 1905, under the Municipal Incorporation Act.

On or about November 30, 1906, there was duly annexed to the City of San Pedro, a certain area including the subdivision known as East San Pedro, being a substantial portion of Terminal Island bordering on the Pacific Ocean and Bay of San Pedro. Said area had formerly been claimed by the City of Long Beach as being within its westerly boundary.

4. By reason of the consolidations and annexations aforesaid, the southwesterly and seaward boundary of the City of Los Angeles was established as the southwesterly boundary of the County of Los Angeles. As of the date such consolidations and annexations took place, at all times since such dates, and at the present time, the southwesterly boundary of the County of Los Angeles has been established and fixed by the Legislature of the State of California as being coincident with the southwesterly boundary of the State of California (California Political Code, Sec. 3927), as hereinabove alleged. Hence, the southwesterly boundary of the City of Los Angeles is coincident with a line paralleling the coast of the State of California distant therefrom three English miles in the Pacific Ocean, said line being measured parallel to a line joining the extremities of indentations and bays along the coast of California. By reason thereof the boundaries of the State of California, of the County of Los Angeles, and of the City of Los Angeles, in the vicinity of the former City of San Pedro and Town of Wilmington, is a line three miles seaward from and parallel to a line tangent to and joining Point Fermin and Point Lausen, which said points mark the limits of the Bay of San

Pedro, with the Bay of San Pedro lying northeasterly of said last mentioned line.

5. By Act of the Legislature of the State of California approved May 1, 1911 (1911 Stats., p. 1256), the State granted to the City of Los Angeles the title of the State

> "held by said State by virtue of its sovereignty, in and to all tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said City, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held in trust for harbor purposes. Said Act was subsequently amended with the enlargement of the coastal boundaries of the City of Los Angeles, so as to grant to the City all tide and submerged lands within its westerly and southwesterly boundaries as established from time to time and as presently established. (1917 Stats., p. 159; 1929 Stats., p. 1085.)

(II)

The Harbor of Los Angeles may be generally described in the following manner:

1. The harbor known as the Harbor of Los Angeles is situated at the westerly end of San Pedro Bay in the Pacific Ocean. The harbor consists of a so-called Outer Harbor and an Inner Harbor. The Outer Harbor consists of that portion of the Pacific Ocean and San Pedro Bay devoted to harbor purposes lying generally northerly of the breakwater extending from approximately Point Fermin southeasterly into the Pacific Ocean and Bay of San Pedro, and lying immediately to the east of the easterly bluff of Point Fermin and San Pedro. This portion of the Harbor has been generally designated as San Pedro Harbor.

2. The Inner Harbor consists of those improvements for harbor purposes made within the area of the former Town of Wilmington reclaimed from low lying flats north of Terminal Island. This area was originally known as the Harbor of Wilmington.

3. The harbor developments of Wilmington Harbor have proceeded with the development of the Entrance Channel, the East Basin, Turning Basin, West Basin and Cerritos Channel. The Inner Harbor is connected with the Outer Harbor by the so-called Main Channel or Entrance Channel now approximately 1000 feet in width.

4. The limits of reclamation have been determined and fixed by the United States War Department in the establishment of the harbor line first established in the year

1891 and changed from time to time thereafter. These harbor lines consist of a Pierhead Line beyond which wharves or other structures are not permitted to extend into the navigable waters of the channels; and Bulkhead Lines establishing the limit behind which owners are permitted to fill or otherwise reclaim and develop the land, whether tidelands, or submerged lands, or uplands.

5. In the year 1850 and prior thereto the westerly limits of San Pedro Bay consisted of a headland or bluff known as Point Fermin. The east face of said Point rose abruptly above the waters and adjacent channels and lay in a north and south direction. The northerly shore of San Pedro Bay was formed by a long, regular, crescent beach extending generally from Point Fermin Bluff to Point Lasuen on the south. This beach, in the four miles southward from Point Fermin, fronts upon a narrow upland or island formed by sand dunes and vegetation, formerly called Rattlesnake Island, now called Terminal Island. To the north of this beach and upland was a low, flat, marshy area into which the Old San Gabriel and the Los Angeles Rivers emptied, and thence flowed into the Pacific Ocean at either end of said Rattlesnake Island. Said low, flat, marshy area was threaded with sloughs and channels and was known as Wilmington Lagoon, or the Inner Bay of San Pedro. Close to the bluff of Point Fermin was the main Inner Channel. This channel emptied into the Bay of San Pedro flowing between said Bluff and the westerly end of Rattlesnake Island over a long sand bar. Southwesterly from the end of Rattlesnake Island and approximately one mile distant therefrom, situated in the Pacific Ocean and San Pedro Bay, was a well defined, precipitous rock and upland known as Deadman's Island.

(III)

The United States has surveyed this Harbor of Los Angeles from an early date and has participated in its development in the following manner:

1. Congress, by Act of August 17, 1848, directed the United States Coast Survey to survey and chart the western coast of North America. The United States Coast Survey thereupon caused a series of maps and charts of the Pacific Ocean to be prepared. In the year 1852 the United States Coast Survey made a reconnaissance of San Pedro Harbor, followed by hydrographic surveys in the years 1854 and 1859. Thereafter, pursuant to Acts of Congress, the United States Coast and Geodetic Survey caused topographic and hydrographic surveys to be made of the harbors known as Wilmington Harbor, San Pedro Harbor, and Los Angeles Harbor; and prepared and published maps and charts thereof.

A copy of the 1859 United States Coast Survey map upon which have been superadded the harbor lines established therein by the United States, as aforesaid, as the same were in effect in the year 1940, is set forth as follows:

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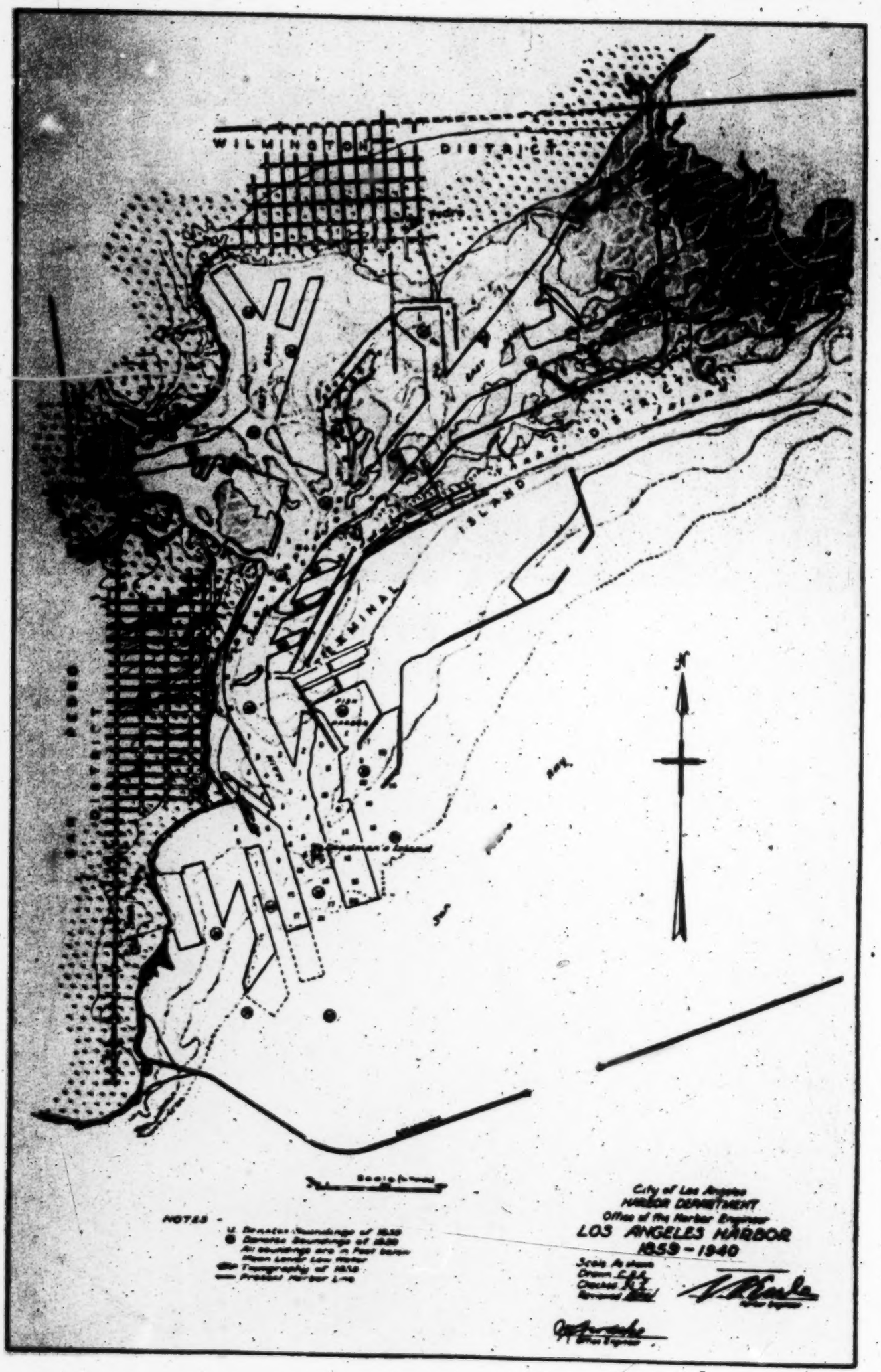
PAGE


WILMINGTON DISTRICT
TERMINAL ISLAND
SAN PEDRO DISTRICT
N
NOTES -
City of Los Angeles
HARBOR DEPARTMENT
Office of the Harbor Engineer
LOS ANGELES HARBOR
1859 - 1940

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PAGE

For purposes of illustrating the transactions hereinafter alleged between the City of Los Angeles and the United States, a photograph showing a major portion of the Los Angeles Harbor is set forth as follows:

2. Since the year 1869 the Secretary of War, the War Department of the United States, the Chief of Engineers of the United States Army, the United States Division Engineer, the local agency known as the United States District Engineer Office at Los Angeles, and since 1902 the Board of Engineers for Rivers and Harbors, have been immediately in charge of certain phases of improvements in the San Pedro, Wilmington and Los Angeles Harbors. In connection therewith said agencies have made and platted surveys thereof, have established harbor lines in the years 1891, 1908 and 1911 and have modified the same from time to time; have furnished reports required by Congress and by Federal agencies of administration; and have supervised the work of improvement of the channels of said harbor and the construction of said breakwater. Such improvements, however, by the United States and its officers above mentioned have not included the construction, maintenance, supervision or financing of any port improvement, such as slips, docks, terminals, bulkheads, warehouses, wharves, sheds, streets, railroads and the like, but these latter have been constructed, financed and furnished by the City of Los Angeles and private interests within Los Angeles Harbor.

3. The development of the Harbor of Los Angeles is set forth in detail in the Annual Reports of the District Engineer of the Corps of Engineers, United States Army, to the Chief of Engineers, United States Army; from said Chief of Engineers, United States Army, to the Secretary of War; from the Board of Engineers for Rivers and Harbors to the Secretary of War; and from the Secretary of War to the Committees on Commerce and Navigation and on River and Harbor Improvement, and to other Committees of the Senate and House of Representatives of Congress. Various of said reports were severally

adopted by the Congress of the United States in the passage of River and Harbor Acts, designated below. Said Acts of Congress are as follows:

Act of June 10, 1872 (17 U. S. Stats. c. CDXVI);
Act of March 3, 1875 (18 U. S. Stats. c. 134);
Act of June 18, 1878 (20 U. S. Stats. c. 264);
Act of March 3, 1879 (20 U. S. Stats. c. 181);
Act of June 14, 1880 (21 U. S. Stats. c. 211);
Act of August 2, 1882 (22 U. S. Stats. c. 375);
Act of July 5, 1884 (23 U. S. Stats. c. 229);
Act of August 5, 1886 (24 U. S. Stats. c. 929);
Act of August 11, 1888 (25 U. S. Stats. c. 860);
Act of September 19, 1890 (26 U. S. Stats. c. 907);
Act of July 13, 1892 (27 U. S. Stats. c. 158);
Act of June 3, 1896 (29 U. S. Stats. c. 314);
Act of February 17, 1897 (29 U. S. Stats. c. 236);
Act of June 4, 1897 (30 U. S. Stats. c. 2);
Act of July 1, 1898 (30 U. S. Stats. c. 546);
Act of March 13, 1899 (30 U. S. Stats. c. 424);
Act of March 3, 1901 (31 U. S. Stats. c. 853);
Act of June 13, 1902 (32 U. S. Stats. c. 1079);
Act of June 28, 1902 (32 U. S. Stats. c. 1301);
Act of March 3, 1903 (32 U. S. Stats. c. 1007);
Act of April 28, 1904 (33 U. S. Stats. c. 1762);
Act of March 3, 1905 (33 U. S. Stats. c. 1482);
Act of March 3, 1905 (33 U. S. Stats. c. 1483);
Act of June 30, 1906 (34 U. S. Stats. c. 3914);
Act of March 2, 1907 (34 U. S. Stats. c. 2509);
Act of March 4, 1907 (34 U. S. Stats. c. 2918);
Public Resolution 14, March 26, 1908 (35 U. S. Stats. No. 14, p. 569);
Act of March 3, 1909 (35 U. S. Stats. c. 264);
Act of March 4, 1909 (35 U. S. Stats. c. 299);
Act of June 25, 1910 (36 U. S. Stats. c. 382);
Act of July 25, 1912 (37 U. S. Stats. c. 253);

Act of March 4, 1913 (37 U. S. Stats. c. 144);
Act of March 4, 1915 (38 U. S. Stats. c. 142);
Act of July 27, 1916 (39 U. S. Stats. c. 260);
Act of August 8, 1917 (40 U. S. Stats. c. 49);
Act of July 18, 1918 (40 U. S. Stats. c. 155);
Act of March 2, 1919 (40 U. S. Stats. c. 95);
Act of June 4, 1920 (41 U. S. Stats. c. 228);
Act of June 5, 1920 (41 U. S. Stats., Part I, c. 252);
Act of September 22, 1922 (42 U. S. Stats. c. 427);
Act of March 3, 1925 (43 U. S. Stats. c. 467);
Act of July 3, 1930 (46 U. S. Stats. c. 847);
Act of August 30, 1935 (49 U. S. Stats. c. 831);
Public No. 868, Chap. 895, 3rd Session, 76th Congress, Approved October 17, 1940.

4. The improvement of San Pedro Harbor was first recommended in the years 1869 to 1871 by the Board of Engineers. The Secretary of War, in his Annual Report for 1871, recommended to Congress that an appropriation be made for the construction of a jetty or breakwater 7000 feet long between the points known as Deadman's Island and the westerly tip of Rattlesnake Island for the purpose of deepening the water in the entrance channel and in the inner channel and of confining the flow of water from the Inner Harbor to the Outer Harbor. Said work was authorized by the River and Harbor Act of June 10, 1872 and subsequent acts.

5. The United States Engineer, pursuant to said Acts of Congress, proceeded to construct such jetty or breakwater connecting Deadman's Island and the westerly tip Rattlesnake Island, which breakwater was thereafter

known as the East Jetty. Said breakwater was completed in the year 1881. Another breakwater was constructed on the west side of the main or entrance channel beginning in the year 1876, which breakwater was thereafter known as the West Jetty.

(IV)

Title to portions of the submerged lands in the Pacific Ocean and Bay of San Pedro was ruled by the Department of Justice as early as 1902 to be held by the State of California.

1. The effect of the construction of the said East Jetty, beginning in the year 1872, was, among other things, to cause an artificial accretion of land to form against the easterly side of said Jetty and the southerly shore of Rattlesnake Island, thereby extending Rattlesnake Island into the Pacific Ocean and Bay of San Pedro in a southerly and easterly direction. Since the year 1872, hundreds of acres of upland have accreted or been artificially reclaimed by filling in along the easterly side of East Jetty and the gradual extending of the shore of Rattlesnake (now Terminal) Island.

2. The question of title and ownership of the land thus artificially formed easterly of the East Jetty and extending into the Pacific Ocean and Bay of San Pedro on the westerly end of Rattlesnake Island, as aforesaid, was raised. The United States District Engineer at Los Angeles requested an opinion from the United States Attorney in the year 1902 as to whether the title to these artificial accretions formed against the East Jetty breakwater

were owned by the State of California or were owned by the United States of America.

3. In the records of the United States District Engineer's Office entitled "Letters Received Vol. 2, Wilmington Harbor, January 1899-January 1903", p. 91, there is recorded a written opinion of L. H. Valentine, United States Attorney at Los Angeles, written to Captain Edgar Jadwin, United States District Engineer Officer, Los Angeles, dated February 28, 1902, stating that title to all accretions which have formed upon tide and submerged lands and against the East Jetty breakwater constructed by the United States belong to the State of California and not to the United States.

(V)

Thereafter the United States recognized and asserted the title to the State of California, its grantees or lessees, in and to the reclaimed and artificially accreted lands easterly of the East Jetty Breakwater, and upon tide and submerged lands extending into the Pacific Ocean and San Pedro Bay in front of Rattlesnake (Terminal) Island.

1. One of such acts of recognition of the State's ownership and that of its grantee, the City of Los Angeles, of such portions of submerged lands formed in the Pacific Ocean and San Pedro Bay relates to a lease by the City of Long Beach in the year 1905 to a portion of submerged land in an area now within the boundaries of the City of Los Angeles.

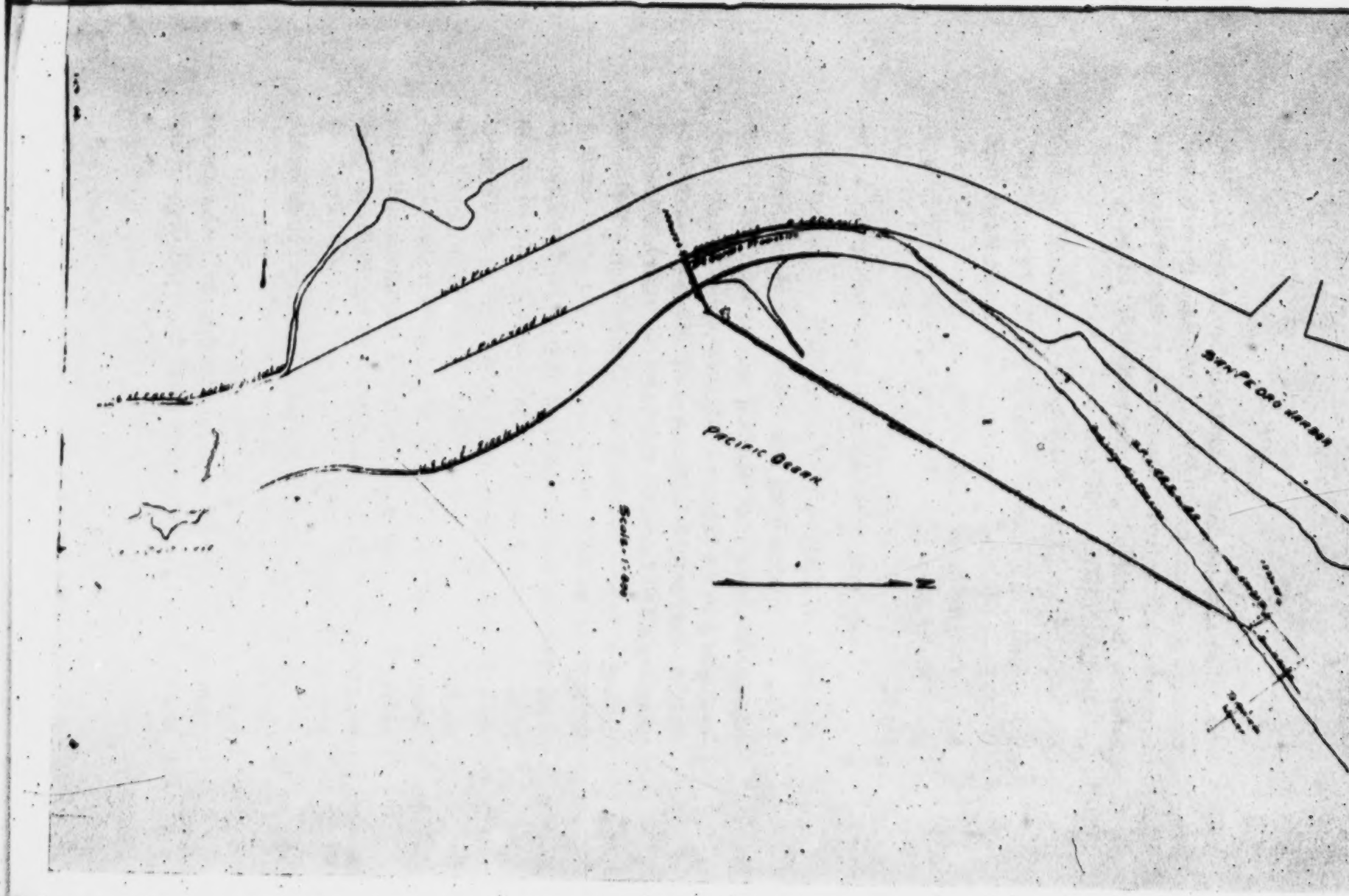
2. Prior to the consolidation and annexation of the City of San Pedro and Town of Wilmington to the City

of Los Angeles in the year 1909, as aforesaid, both the City of Long Beach and the City of San Pedro claimed that the westerly portion of Terminal Island was situated within the jurisdiction of each respective municipality. This dispute as to the westerly boundary of the City of Long Beach was not determined until the boundary was fixed in the Charter of the City of Long Beach approved by the Legislature on February 26, 1907, as above alleged, at which time the westerly boundary of the City of Long Beach was fixed at the westerly line of Block 10 in East San Pedro Tract as per a recorded map, being approximately in the middle of Terminal Island.

3. Commencing in 1891, Los Angeles Terminal Railway Company, a corporation, constructed its main line from Los Angeles to Long Beach, thence westerly along the shore of Terminal Island to its harbor terminus at the westerly tip of Terminal Island, being at the easterly end of the East Jetty breakwater between Terminal Island and Deadman's Island, as aforesaid. San Pedro, Los Angeles and Salt Lake Railroad Company was the successor in interest of Los Angeles Terminal Railway Company in about the year 1901.

4. On October 2, 1905, the City of Long Beach executed a written lease with San Pedro, Los Angeles and Salt Lake Railroad Company (hereinafter sometimes referred to as "the Railroad Company") leasing for a period of 46 years from date thereof a parcel of approximately 80 acres of tide and submerged lands extending into the Pacific Ocean and Bay of San Pedro easterly of the angle

formed by the East Jetty breakwater with the westerly tip of Terminal Island. Said lease gave the Railroad Company the right to fill in all lands situated below mean high water mark within the described tract and to use and occupy the same during the term of the lease. One of the conditions of the lease was that the Railroad Company within five years after date thereof shall construct a breakwater or bulkhead of character and size to be approved by the United States War Department along the front or seaward side of said tract and for failure to construct said breakwater the lease should be forfeited. A plat was attached to said map delineating the demised premises. A copy of said plat is set forth as follows, with the described premises being enclosed within the heavy border shown thereon.


PACIFIC OCEAN

5. The City of San Pedro, on September 12, 1906, executed a written lease to W. T. Wheatly for a term of five years, which parcel substantially overlapped the parcel leased to the Railroad Company by the City of Long Beach on October 2, 1905, as aforesaid.

6. The Legislature of the State of California enacted a Validation Act, approved March 23, 1907 (Stats. 1907, p. 987), by which said Legislature confirmed leases made by any county or municipality in the State of California prior to January 1, 1907 and subsequent to January 1, 1901,

> "of any tide or submerged lands belonging to the State"

within the boundary of such county or municipality or within boundaries over which it was at the time of such lease acting in the exercise of *de facto* authority. By such statute priority in date of any such lease was deemed to give priority in right; provided that the lessee commenced in good faith the improvement of the demised premises for the purposes of such lease.

7. The Supreme Court of California in *Wheatly v. Consolidated Lumber Co.* (1914), 167 Cal. 441, described the history of the annexations of the portion of Terminal Island in question by the Cities of San Pedro and Long Beach, the conflicting claims of jurisdiction over such territory, the litigation that grew out of such annexations, the lease from the City of Long Beach to the Railroad Company of October 2, 1905,

> "to certain of the contiguous submerged lands of the Ocean"

with the requirement for constructing a breakwater or bulkhead, and the subsequent lease from the City of San

Pedro to Wheatly of substantially the same parcel of submerged lands, and the fact that the Railroad Company diligently and at great expense prosecuted the work of reclamation of the submerged lands called for by its lease. The Court thereupon held that while neither municipality at the time the respective leases were in effect had the right to lease the submerged lands because those lands were

> "not only held in ownership by the State, but only a limited dominion and control over it were vested in the Legislature under the restrictions of the constitution,"

nevertheless the Validation Act of 1907, as aforesaid, cured the defect in the lease and gave priority to the lease from the City of Long Beach to the Railroad Company.

8. Prior thereto, on April 30, 1903, the Railroad Company had entered into an agreement with the United States District Engineer Office at Los Angeles. At the request of said Engineer Office, the Railroad Company thereby granted to the United States the right to lay its pipes for the discharge of dredged materials over and across lands of the Railroad Company on Terminal Island for the purpose of conveying the dredgings from the Inner Harbor and discharging them in front of Terminal Island in the Pacific Ocean and Bay of San Pedro. The Railroad Company thereby agreed that it would protect not less than 2,500,000 cubic yards of such dredgings so deposited by the United States from washing away or in any manner damaging the harbor or public or private interests, by constructing a bulkhead or sea-wall in the Pacific Ocean and Bay of San Pedro in the manner specifically covenanted in said lease with the City of Long Beach dated October 2, 1905, as aforesaid.

Said lease with the City of Long Beach dated October 2, 1905, was obtained by the Railroad Company in order to give it an interest in the real property being formed by reclamation and artificial accretion through the deposit of such dredged materials by the United States in the Pacific Ocean and Bay of San Pedro in front of Terminal Island within the area described in said lease.

Following thereupon the United States did accept said grant from the Railroad Company and did deposit large amounts of dredged material within the area described in said lease of October 2, 1905.

9. In the month of August, 1906, said W. T. Wheatly filed an application with the War Department through its United States Engineer Office at Los Angeles for permission to bulkhead and fill in an area in the Pacific Ocean and Bay of San Pedro covered by his lease from the City of San Pedro, as aforesaid, and likewise covered by the lease from the City of Long Beach to the Railroad Company, as aforesaid.

10. The Railroad Company, on September 6, 1906, filed a protest with the War Department against the granting of said application of W. T. Wheatly, and in said protest advised the War Department in writing, in part, as follows:

> "That the undersigned [Railroad Company] is the owner in fee simple of a portion of above described area, and is lessee of all the remainder of said area under a lease made to it by the City of Long Beach, a municipal corporation, having control of and claiming to be the owner of all of the said area not actually owned by the undersigned, a certified copy of which lease is hereto attached marked 'Exhibit A' and made

a part hereof . . . That the undersigned for some time past has had under consideration the preparation of plans for the construction of a sea-wall or jetty which would protect its lands, as well as reclaim that portion thereof which were lost by the action of the said currents, and also reclaim the area so leased to it by said City of Long Beach. And the undersigned has this day filed in the office of Capt. Amos Frees at Los Angeles, California, an application to the Secretary of War for permission to construct a sea-wall or jetty for the purpose of reclaiming the lands so claimed by it, and which said lands are practically identical with the area above described, reference to which application is hereby made for particulars. And the undersigned represents that, in the event that its application to construct said sea-wall, and to reclaim said area, is granted, that it proposes to begin and prosecute to completion as soon as possible the said work."

11. On September 6, 1906, the Railroad Company filed its application with the War Department through its United States Engineer Office at Los Angeles for a permit to construct a sea-wall around and reclaim lands included within the lease to it from the City of Long Beach dated October 2, 1905. An affidavit was filed attached to which was a copy of the Memorandum Agreement dated April 30, 1903, whereby the Railroad Company granted to the United States Government, at the request of its District Engineer, the right to lay pipes across the lands of the Railroad Company on Terminal Island for the purpose of

conveying the dredgings into and reclaiming the lands within the area leased to the Railroad Company by the City of Long Beach, as aforesaid.

12. On October 27, 1906, the War Department, through its Acting Secretary of War, issued its permit to the Railroad Company to construct said sea-wall or breakwater.

13. Immediately thereafter the Railroad Company constructed said sea-wall in the Pacific Ocean and Bay of San Pedro in front of Terminal Island enclosing the land described in the lease from the City of Long Beach to the Railroad Company dated October 2, 1905, at a total cost to the Railroad Company of approximately $34,000. Said area was thereupon filled in by the United States and the Railroad Company, at a cost of filling to the Railroad Company of approximately $33,-000. The construction of said sea-wall and filling were completed by December, 1908.

14. The 1907 Annual Report of the Chief of Engineers of the United States Army to the Secretary of War reported (p. 2133) that:

> "The filling and bulkheading of certain areas in the outer harbor has been in progress during the year by . . . San Pedro, Los Angeles and Salt Lake Railroad Company . . . a total of 827,320 cubic yards of material was dredged . . . . This material was wasted as follows: East of East Jetty to concession of Salt Lake Railroad Company 484,420 cubic yards."

15. In the Annual Report of 1910 of the Chief of Engineers, United States Army to the Secretary of War it was reported (p. 904) that:

> "The San Pedro, Los Angeles and Salt Lake Railroad Company has also bulkheaded about 81 acres of land reclaimed with material deposited by the government dredge."

16. In the year 1914 this bulkheading and reclamation by the Railroad Company was reported to Congress by the Secretary of War in House Document No. 896, 63rd Congress, 2nd Session, where it is reported that:

> ". . . The Salt Lake Railroad Company has constructed a bulkhead within which the United States has deposited dredgings from the inner harbor, thereby reclaiming about 70 acres of land. The Salt Lake Railroad Company, in front of its property and between United States Station 107 and a point about 1000 feet northeast of United States Station 404 has dredged a channel about 20 feet deep, about 100 feet wide and about 3000 feet long, the material removed having been pumped upon its land nearby."

17. The City of Los Angeles, and the Los Angeles and Salt Lake Railroad Company [formerly San Pedro, Los Angeles and Salt Lake Railroad Company] entered into an agreement under date of March 4, 1921, reciting in part that:

> "Whereas, the United States Government has approved a plan for widening the main channel of the Los Angeles Harbor on the easterly side thereof for the width of approximately 1000 feet and preparations

have been made to start such work of widening upon condition that the City shall clear the way to fixing the title of lands and wharves necessary to be taken or removed for such channel widening; and

Whereas, the Company is the owner or holder under grants, franchises, leases or other rights of a considerable portion of the lands and of such wharves so required to be taken for the widening of said channel;"

The Railroad Company thereupon surrendered and transferred to the City of Los Angeles all its right in Parcel No. 1 therein described, held by the Railroad Company under said lease from the City of Long Beach dated October 2, 1905, with the right of the Railroad Company to retain possession of said Parcel No. 1 until required in the work of widening the Entrance Channel. The City thereupon re-leased Parcel No. 3a described therein to the Railroad Company, being a parcel of unreclaimed submerged lands in the Pacific Ocean and Bay of San Pedro, with the right to deposit dredged materials and reclaim such land. The City likewise re-leased to the Railroad Company Parcel No. 3b therein described, which parcel covers all that portion of the tide and submerged lands held by the Railroad Company under the lease of October 2, 1905 from the City of Long Beach remaining after relinquishment to the City of Los Angeles of that portion thereof described as Parcel No. 1. The City of Los Angeles thereby acknowledged the validity of said lease from the City of Long Beach, and thereby extended the terms of the original lease for a period of 30 years from the date of said agreement of May 11, 1921.

18. Said Parcel No. 1 released to the City of Los Angeles by the Railroad Company on May 11, 1921, afore-

said was thereafter granted to the United States in the 61.98 acre parcel of the so-called Reservation Point Exchange of 1927 hereinafter alleged.

(VI)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease from the City of Long Beach in 1906 of submerged lands since included within the boundaries of the City of Los Angeles, is the following:

1. A lease of submerged lands adjacent to and westerly of the parcel leased by the City of Long Beach to the Railroad Company on October 2, 1905, as aforesaid, was executed by the City of Long Beach to Thomas Hughes, Louis Blankenhorn and D. P. Hatch under date of February 12, 1906. Said lease was recorded in Book 53, page 295, records of Los Angeles County Recorder's office. It was for a term of 50 years from said date upon conditions requiring said lessees, within a specified time, to complete the work of bulkheading the demised premises.

2. Said lease was on March 22, 1906, by said lessees assigned to Pacific Wharf & Storage Company, a corporation.

3. Said lease was validated by the Act of the Legislature of the State of California approved March 23, 1907 (Stats. 1907, page 987), as aforesaid.

4. Immediately after such assignment to it, Pacific Wharf & Storage Company commenced the construction of a bulkhead in the Pacific Ocean and Bay of San Pedro enclosing the area of said leasehold; and the area thereof

was thereupon filled in by the United States by the deposit of materials dredged from the Inner Harbor.

5. This bulkheading and dredging was reported to the Secretary of War in the Annual Report of the Chief of Engineers for the year 1910 (page 904), stating, in part, as follows:

> "The Pacific Wharf and Storage Company has enclosed about 80 acres within a stone bulkhead and have reclaimed a portion of the area with material dredged from the inner harbor by the government dredge."

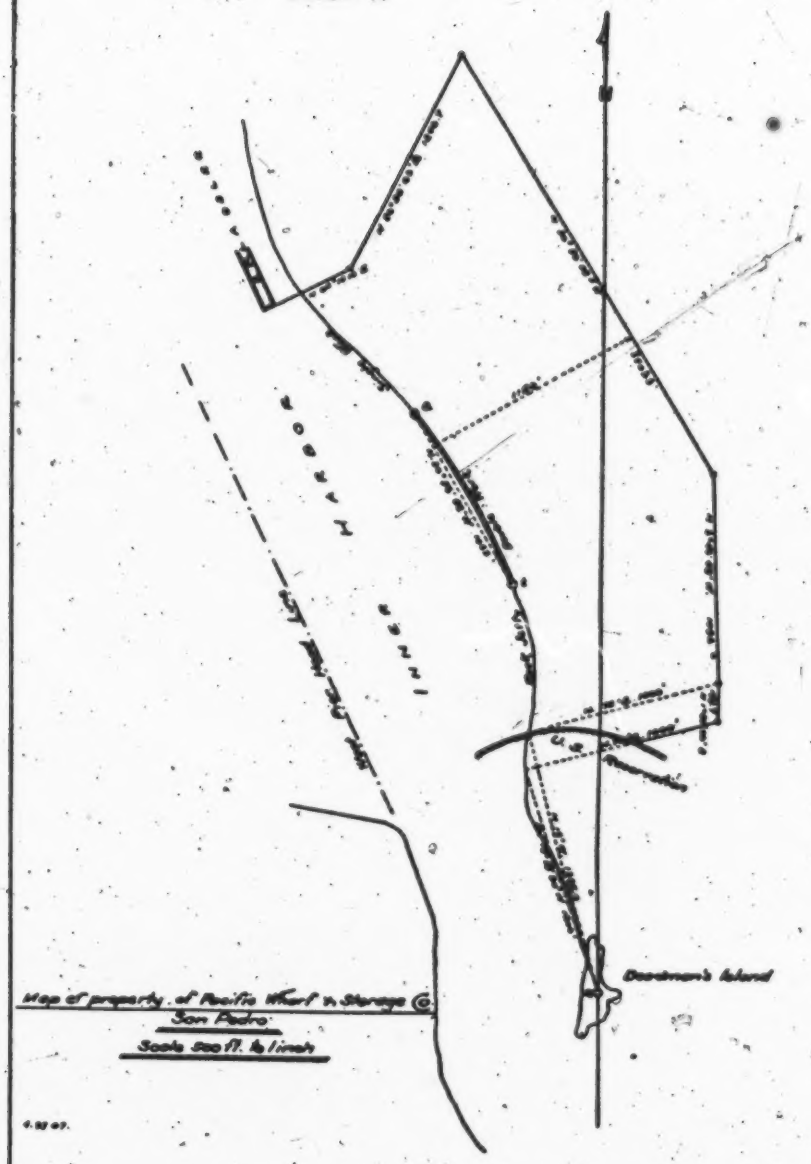
Likewise this was reported to Congress by the Secretary of War on several occasions, including the report contained in House Document No. 896, 63rd Congress, 2nd Session, page 14, where it is reported to Congress that:

> "Across the channel is a bulkhead constructed by the Pacific Wharf and Storage Company which is about 1500 feet deep, is wharfed on the north side and has been dredged to 30 feet. This company has reclaimed about 70 acres of land nearby."

6. On May 11, 1909 Pacific Wharf and Storage Company executed an indenture mortgaging its said leasehold and other properties to Merchants Trust Company, as trustee, to secure the payment of a bonded indebtedness in the sum of $500,000, which mortgage was duly recorded in Book 3792, Page 1 of Deeds, Los Angeles County Recorder's office. Attached to said mortgage is a photostatic copy of the parcel of tide and submerged lands in the Pacific Ocean and Bay of San Pedro thus leased to the predecessors of Pacific Wharf and Storage Company by the City of Long Beach, as aforesaid, and thus mortgaged by said corporation.

A copy of said map is set forth as follows:

Exhibit A



Recorded at request of Mtge. May 13. 1909. at 5 min past 3 P M.
in Book 2136 Page 1 of Mortgages Los Angeles County Records.
H. J. Logan County Recorder By E. E. Salladay Deputy.
Recorded at request of Mtge May 13 1909. at 5 min past 3 P M.
in Book 2149 Page 210 of Chattel Mortgages Los Angeles County Records.
H. J. Logan County Recorder By E. E. Salladay Deputy.
A full true and correct copy of original recorded at
request of Grantee. May 13 1909. at 5 min past 3 P.M. 425
H. J. Logan County Recorder By W. M. Kellogg Deputy

7. Said mortgage was foreclosed by Merchants Trust Company on behalf of the bondholders, and thereafter, on March 5, 1918, said property was sold at sheriff's sale to Emmanuel Cohen, who thereupon took over the interest of Pacific Wharf and Storage Company. Subsequently a corporation known as Southwestern Shipbuilding Company was formed, which took over the interest of said Emmanuel Cohen.

8. On or about December 18, 1918, Southwestern Shipbuilding Company and the City of Los Angeles, through its Board of Harbor Commissioners, entered into an agreement modifying and supplementing said lease of February 12, 1906, whereby certain property covered by said lease of February 12, 1906 was surrendered to the City of Los Angeles, and the City of Los Angeles executed a new lease to Southwestern Shipbuilding Company for a term of 30 years on certain adjacent tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro.

9. In the year 1922 the Board of Harbor Commissioners of the City of Los Angeles granted to Southwestern Shipbuilding Company permission to sublet portions of its said shipyard, which were thereupon sublet to Bethlehem Shipbuilding Corporation, Ltd. which sublease is recorded in Book 795, Page 145, Official Records of Los Angeles County.

10. Subsequent thereto Southwestern Shipbuilding Company assigned its said leasehold estate under said lease of February 12, 1906, to Bethlehem Shipbuilding Corporation, Ltd., as modified and supplemented by the agreement of lease dated December 23, 1918, between the City of Los Angeles and Southwestern Shipbuilding Company,

recorded in Book 3828, Page 188 of Official Records, Los Angeles County.

11. In the year 1924 that portion of the leasehold included in the February 12, 1906 lease which was surrendered to the City of Los Angeles by Southwestern Shipbuilding Company by agreement of December 23, 1918 as aforesaid, was on November 25, 1924 leased to General Terminal Company for private wharf purposes, in return for the surrender by said company of certain of the tide and submerged lands held by said company under lease.

12. The property thus surrendered to the City of Los Angeles by General Terminal Company was for the express purpose of permitting said City of Los Angeles to exchange said surrendered submerged lands to the United States in the so-called 1927 exchange of the 61.98 acre parcel of Reservation Point with the Federal Government, hereinafter more particularly alleged.

13. On December 17, 1930 Bethlehem Shipbuilding Corporation, Ltd. surrendered to the City of Los Angeles two certain parcels of the lands therein designated as Parcels C and D, which parcels were part of the submerged lands included within said lease of February 12, 1906. The United States had requested an exchange of said Parcels C and D as well as certain other parcels hereinafter mentioned of tide and submerged lands owned by the City of Los Angeles, in exchange for certain tide and submerged lands granted to the United States by the Act of March 9, 1897 as aforesaid, in carrying out the improvement of widening the entrance channel to a 1000 foot depth. Said agreement recited in part that:

> "Whereas the United States has undertaken and now has completed the work of widening said chan-

nel between the outer and inner harbor to a width of 1000 feet, which has required the taking of certain Bethlehem lands designated as Parcel C and D. . . . , and the City has requested Bethlehem to join with it in the adjustment and relocation of certain lines of said property by releasing the said Parcels C and D, in return for which the City will lease and demise to Bethlehem certain lands adjacent to those now held by it, being the land designated as Parcel B . . . for a term coterminus with said original lease, and also agrees to extend the term of said supplemental lease of 1918 for a like term."

(VII)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease by the City of San Pedro in the year 1905, is the following:

1. The City of San Pedro executed a lease to H. E. Huntington as trustee for Southern Pacific Railroad Terminal and Wharf Company on August 2, 1905, for a term of 50 years, to a portion of submerged lands situate in the Pacific Ocean and Bay of San Pedro lying on the westerly side of the Entrance Channel to Los Angeles Harbor. One of the conditions of the lease was that the lessee, within six months, would commence improvement of the property:

"By constructing a bulkhead and filling in said premises with shale or other material as shall be found most expedient to reclaim the same from the ocean, . . ."

2. H. E. Huntington theretofore and on February 9, 1903, had been granted by the Board of Supervisors of Los Angeles, a franchise, pursuant to statutes of the Legislature of the State of California, to construct and maintain a wharf on a location adjacent to the tide and submerged lands covered by said lease. Said lessee was thereby obligated to expend not less than $100,000 in said work and said work to be completed within five years from the date of said lease.

3. Some filling having been done on the inshore end of the parcel of submerged land thus leased to Huntington, but no bulkheads having been constructed at the expiration of said five year period, the City of Los Angeles declared said lease forfeited on August 9, 1910, for failure to comply with the conditions thereof.

4. Thereafter the City Council of the City of Los Angeles passed its Ordinance No. 23,279(NS) on August 18, 1911, setting apart and dedicating as "Municipal Pier No. 1" the tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro theretofore leased to H. E. Huntington, which lease was theretofore forfeited by the City of Los Angeles, as aforesaid.

5. The City of Los Angeles adopted a plan for the reclamation of said Municipal Pier No. 1, including dredging of adjacent channels and depositing the spoil therefrom behind bulkheads enclosing said Huntington Concession or Municipal Pier No. 1. On March 23, 1912, the Board of Harbor Commissioners of the City of Los Angeles advertised for bids for said reclamation work.

6. On June 14, 1912, the Board of Harbor Commissioners of the City of Los Angeles made written appli-

cation to the Secretary of War for a permit to establish the necessary bulkhead lines, to perform the proposed dredging of channels, to make the necessary fill, and to modify the pier head line adjoining this area. Said application stated, in part, that

> "the land bounded by the present bulkhead line, and the prolongation thereof * * * *are tide and submerged lands owned by the City of Los Angeles,* a municipal corporation of the State of California, and are part of the lands acquired by said City under the grant made by Act of the Legislature of said state approved May 1, 1911, for uses and purposes which required that said lands be used solely for the construction, operation and maintenance thereon of utilities, structures, and appliances necessary and convenient for the promotion and accommodation of commerce and navigation."

On or about June 31, 1912, the Secretary of War granted a permit to the City of Los Angeles authorizing the dredging of the East Channel in the Outer Harbor and the disposition of the spoil therefrom within said area known as Municipal Pier No. 1, then being reclaimed.

7. Thereupon the City of Los Angeles built a bulkhead and retaining wall enclosing the tide and submerged lands thus dedicated as Municipal Pier No. 1, also bulkheaded the area, dredged the Entrance Channel, and constructed a large wharf, warehouse and docks thereon.

8. The bulkheading and filling by the City of Los Angeles of the so-called "Huntington Concession," or

Municipal Pier No. 1, was reported to Congress from time to time as the work progressed. In 1914 the Secretary of War reported to Congress, in House Document No. 896, 63rd Congress, 2d Session, page 13, that:

> "The City of Los Angeles has raised by bond issue $2,000,000 for harbor work in that part of the harbor south of the turning basin . . . Of this $2,000,000, $70,502 has been paid for filling the 'Huntington Concession' and moving the west jetty; $287,416 is pledged under contract for these works and other dredging on the east side of the 'Huntington Concession'; after setting apart $460,320 for a reinforced concrete wharf in the outer harbor . . . Briefly, the harbor work proper now in hand or in immediate prospect is the reclamation of the shore part of the 'Huntington Concession'; dredging out the east side of the 'Huntington Concession', and the construction of a 2500 foot reinforced concrete wharf on the west side of the 'Huntington Concession.'"

9. Three million dollars ($3,000,000) of bonds were voted to be issued by the electors of the City of Los Angeles on February 16, 1910. Said bonds were thereafter issued by the City of Los Angeles. The sum realized therefrom was expended for harbor improvements. The major improvement for which the sum so derived was expended was the reclamation of said former "Huntington Concession" and the erection of terminal facilities thereon. Municipal Pier No. 1 when completed constituted and now constitutes an area of reclaimed land approximately 2500 feet long and 700 feet wide, bounded on the east by the Main Channel, on the west by East Channel, and on the south by the Outer Harbor. Municipal Pier No. 1 is improved by structures and facilities, including

Warehouse No. 1, a transit shed, necessary roads, streets and other appurtenant facilities.

10. Since the completion of Municipal Pier No. 1 by the City of Los Angeles, its Board of Harbor Commissioners has been requested to grant and has granted leases, licenses and easements of substantial portions thereof to the United States. Certain of said leases, licenses and easements granted to the United States covering substantial portions of Municipal Pier No. 1 are the following:

(a) On April 9, 1917, the Secretary of the Navy accepted the use of Municipal Pier No. 1 as a temporary base for the United States Coast Torpedo Force and said Municipal Pier No. 1 was so used during World War 1 by the United States Navy for that purpose.

(b) On June 8, 1917, the United States Navy Department accepted on behalf of the United States the use of the southerly 600 feet of said Municipal Pier No. 1 as a Submarine Base. On said date the Navy Department also accepted the north and central sections thereof embracing 1200 feet along the East Channel, under a permit from the Board of Harbor Commissioners of the City of Los Angeles, for a Naval Training and Coast Defense Station.

(c) On June 12, 1916, the Navy Department officially designated the facilities thus granted and permitted by the Board of Harbor Commissioners of Municipal Pier No. 1 as "United States Navy Reserve Training Station, Los Angeles Harbor, San Pedro, California."

(d) The United States Navy thereupon erected fences around Municipal Pier No. 1 barring access

thereto by any one other than the United States, subject to additional uses and controls by the Board of Harbor Commissioners.

(e) After the close of World War I, the United States Navy vacated the premises used by it during the war on Municipal Pier No. 1, as requested from time to time by the Board of Harbor Commissioners of the City of Los Angeles.

(f) On January 3, 1934, the Board of Harbor Commissioners of the City of Los Angeles granted to the United States Navy Department a revocable lease permit to use berths Nos. 56, 57 and 58 on the East Channel, a part of Municipal Pier No. 1, as and for Naval Landing Purposes. Said berths Nos. 56, 57 and 58 constitute a portion of tide and submerged lands in the Pacific Ocean and Bay of San Pedro, reclaimed as a part of Municipal Pier No. 1. After the date of said grant of January 3, 1934, down to November, 1940, the United States continued to occupy, enjoy and use berths Nos. 56, 57 and 58 pursuant to said revocable lease permit and paid to the City of Los Angeles the rental due thereunder.

(VIII)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease from the City of Los Angeles (and

its predecessor the City of San Pedro) to Randolph H. Miner in the year 1906, is the following:

1. The City of San Pedro entered into a written agreement with Randolph H. Miner on February 6, 1906, by the terms of which Miner agreed to reclaim and fill certain submerged lands in the Pacific Ocean and Bay of San Pedro, in consideration of which work, including the dredging of channels, Miner was to receive a lease of said reclaimed lands for a period of 50 years.

2. On February 14, 1906 a lease was duly executed by and between the City of San Pedro and Randolph H. Miner covering a parcel of submerged lands in the Pacific Ocean and Bay of San Pedro westerly of and adjacent to said parcel of land known as the "Huntington Concession," thereafter dedicated as Municipal Pier No. 1, as aforesaid.

3. On May 12, 1906 Randolph H. Miner filed an amended application with the War Department for a permit to construct a bulkhead and retaining wall in the Pacific Ocean and Bay of San Pedro and to fill solid behind said bulkhead the premises demised by the City of San Pedro, as aforesaid. A permit was issued to Randolph Miner on July 25, 1906.

4. Randolph Miner assigned said lease to Outer Harbor Dock and Wharf Company, a corporation, shortly thereafter.

5. On March 23, 1907 the Validation Act of the Legislature of the State of California, approved March 23,

1907 (Stats. 1907, p. 987) as aforesaid, validated and ratified said lease of February 14, 1906.

6. Outer Harbor Dock and Wharf Company immediately commenced the work of improvement, constructed a sea-wall, bulkhead and filled in the area of the demised premises and dredged channels in connection therewith, erected wharves and piers thereon, at a total cost to said company in excess of $1,[illegible]00,000. The area thus reclaimed by said company is approximately 132 acres of submerged lands.

7. On July 23, 1907 the City of San Pedro and Outer Harbor Dock and Wharf Company entered into an amended lease conforming the description of the demised premises with the area covered by said permit from the War Department.

8. Thereafter the City of Los Angeles brought suit against Outer Harbor Dock and Wharf Company to recover possession of all said lands, but judgment was rendered against the City and in favor of Outer Harbor Dock and Wharf Company on April 21, 1919, confirming said lease, within the lines of the original description in the lease of February 14, 1906. A certain controversy still remaining between the City of Los Angeles and Outer Harbor Dock and Wharf Company, a settlement agreement fixing the rights of the parties together with a permit or lease was entered into under date of April 4, 1922, establishing rental schedules to be paid to the City by said lessee.

9. These improvements of the submerged lands in the Pacific Ocean and Bay of San Pedro were duly reported to Congress by the Secretary of War from time to time. One of such reports was rendered in 1914, in House Document No. 896, 63rd Congress, 2d Session, pages 43 and 47, as follows:

> "The Outer Harber Dock & Wharf Co. has dredged in the east and west channels to 30-foot depth (to 35-foot depth for 1,500 feet in front of warehouses in the east channel). Total yardage (including dredging done in Watchorn Basin) 2,564,949 cubic yards; areas reclaimed, 132 acres; 5,400 linear feet of quay wall wharf completed and 2,400 feet additional partly constructed; 1,150 feet of timber wharf constructed; two warehouses built."

Said Secretary further reported to Congress, that:

> "But the outer harbor of 20 years ago was an open roadstead. Since then the United States has built the Walker Board breakwater; at a cost of $2,830,400; and finding that this did not quiet the protected area sufficiently has expended $208,296 in closing the 1,800-foot gap between the original breakwater and the shore. These expenditures made possible the construction of a deep-water port close to the open sea, or as the act making the first appropriation for the breakwater expressed it, 'a deep-water harbor for commerce and of refuge.' Work done by the Outer Harbor Dock & Wharf Co. is described in paragraph 10. It has cost to date, it is said, more than a million and a quarter dollars. The

City of Los Angeles has begun the construction of a similar terminal, and has expended money for land, etc. as a part of an elaborate plan which contemplates ultimately the development of all of its extensive holdings in the outer harbor. In recognition of the work done by the Outer Harbor Dock & Wharf Co.'s terminal and that about to be undertaken on the city terminal, the United States appropriated $327,250 in 1912 to provide 35 feet of water in the space between that contour of depth and the slips of these terminals."

10. Substantial portions of the Outer Harbor Dock & Wharf Company's leasehold property and improvements have been leased and used by the United States of America and several of its departments and agencies, particularly during World War I and World War II.

(IX)

The portions of submerged lands lying in the Pacific Ocean and Bay of San Pedro leased to the San Pedro, Los Angeles and Salt Lake Railroad Company, Pacific Dock & Wharf Company, H. E. Huntington, and Outer Harbor Dock and Wharf Company, as aforesaid, which areas were reclaimed, improved and used, parts of which have been granted to the United States of America as aforesaid, are depicted on that portion of the map prepared by the War Department and transmitted to Congress attached to House Document No. 896, 63rd Congress, 2nd Session, a copy of which portion is as follows:

LOS ANGELES and LONG BEACH HARBORS
CALIFORNIA
IMPROVEMENTS MADE BY THE UNITED STATES
AND REMAINING TO BE MADE BY
PESCA
NAVY

(X)

Another act of recognition by the United States of America of the title of the City of Los Angeles, as grantee of the State of California, in and to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, resulting from an exchange of a 9.75 acre parcel of submerged lands granted to the United States by the Act of March 9, 1897, hereinabove referred to, surrounding Deadman's Island, for an equivalent area of submerged lands owned by the City of Los Angeles, in the years 1912-1915, is the following:

1. In the River and Harbor Act of July 25, 1912, Congress authorized the Secretary of War to grant to the City of Los Angeles a 9.75 acre parcel of submerged lands adjoining the Military Reservation of Deadman's Island. Said 9.75 acre parcel had been previously acquired by the United States by grant from the State of California through the Act of its Legislature approved March 9, 1897, as aforesaid. Said 9.75 acre parcel was situated westerly of the pierhead line of Los Angeles Harbor as established by the Secretary of War on July 29, 1908, and lay in the widened Entrance Channel then in contemplation or under construction. Said Act of Congress of July 25, 1912 authorized the Secretary of War to grant said 9.75 acre parcel to the City of Los Angeles in exchange for a grant by the City of Los Angeles to the United States of an approximately equal area of 9.75 acres of submerged lands owned by the City of Los Angeles lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation (Fort McArthur).

By said Act approved July 25, 1912, Congress provided for said 9.75 acre exchange in the following language:

> "That the Secretary of War be and he is hereby authorized to grant to the City of Los Angeles, California, all of the right, title and interest of the United States in and to that portion of the submerged lands around the military reservation on Deadman's Island *acquired under act of the Legislature of the State of California* approved March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor between Station 15 as established by the Secretary of War (July 29, 1908) and Station 12 as established May 31, 1911, containing an area of 9.75 acres more or less, in exchange for the grant by said City to the United States, for use for public purposes, of an approximately *equal area of submerged lands of said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of 950.53 feet on the West Channel, and lying adjacent and southerly of the submerged lands in front of the San Pedro military reservation."

The Congress of the United States did thereby recognize and assert the title of the State of California and the City of Los Angeles in and to the tide and submerged lands in the Pacific Ocean and Bay of San Pedro.

2. Pursuant to the charter of the City of Los Angeles, by Ordinance No. 25040 (NS) approved May 8, 1912, there was submitted to the qualified electors of the City of Los Angeles at a special election held May 28, 1912, the proposition of authorizing the granting by the City of Los Angeles to the United States of a parcel of submerged lands situated in the outer harbor having a frontage of 950.53 feet lying to the west and southerly in front of the San Pedro Military Reservation, contain-

ing 9.75 acres, in exchange for the grant to the City of Los Angeles by the United States of a parcel of submerged land around the Deadman's Island Military Reservation lying westerly of the pierhead line, likewise containing 9.75 acres. The electors of the City of Los Angeles at said election voted in favor of authorizing said grant by the City of the United States.

3. The Legislature of the State of California passed an act approved May 28, 1913 (Stats. 1913, Ch. 230), authorizing municipal corporations, within whose boundaries are located tide and submerged lands acquired from the State of California, to grant portions thereof to the United States for public purposes, providing such grant be authorized by vote of a majority of the electors of such municipal corporations voting on the question of authorizing such grant; and likewise confirming and declaring legal any case where a propositon to grant such lands to the United States by a municipal corporation had, prior to the passage of such act, been authorized by such vote.

4. On August 16, 1913 the City Council of the City of Los Angeles passed Ordinance No. 28144 (NS) thereby granting to the United States of America the 9.75 acre parcel of submerged lands having a frontage of 950.53 feet on West Channel adjacent to and southerly of the submerged lands in front of San Pedro Military Reservation.

Said Ordinance recited that said grant was made in consideration of the exchange for the grant to the City of Los Angeles by the United States of its title to the 9.75 acre parcel of submerged land around the Military Reservation on Deadman's Island containing an area of approximately 9.75 acres.

Said Ordinance authorized its Mayor, on behalf of the City, to execute a deed granting to the United States the lands therein described upon delivery to the City by the United States of a deed executed by the proper officers of the United States granting to the City said 9.75 acre parcel.

5. The United States required the City to furnish the United States with an abstract of title to the 9.75 acres of submerged lands to be conveyed to the United States in the exchange aforesaid. By letter dated December 12, 1912 the United States District Engineer addressed the Board of Harbor Commissioners of the City of Los Angeles setting forth the provisions of the River and Harbor Act approved July 25, 1912 authorizing exchanges aforesaid, and then stated that:

> "Pursuant to this authority I forward herewith a draft of conveyance to the United States, which has been received from the Chief of Engineers, U. S. Army, with the following instructions:
>
> "1. The accompanying draft of conveyance to the United States should be presented to the proper officials of the City of Los Angeles for execution and when executed these papers should be returned to this office *with abstract of title and all papers necessary to permit the Attorney General to pass upon the title to be conveyed.*
>
> "2. Upon receipt of the *favorable opinion* of the Attorney General as to the title to be conveyed to the United States recommendation will be made to the Secretary of War for the execution by him of the deed of conveyance to the City of Los Angeles . . . ."

6. Pursuant thereto the City of Los Angeles obtained an abstract of title from a title company engaged in the business of abstracting titles in the City of Los Angeles, and furnished the same to the United States, through its United States Engineer office at Los Angeles. Said abstract of title was reviewed by the United States Attorney for the Southern District of California. The United States Attorney requested additional information with reference to the details of the title prior to rendering his opinion as to the status of the title in accordance with the Act of Congress requiring a favorable opinion from the United States Attorney prior to construction of improvements on property acquired by the United States.

7. The United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles on May 11, 1915 relative to the title of the City to the lands to be thus exchanged and stated that in order for the title to said lands to be shown in the City of Los Angeles to the satisfaction of the United States Attorney General it would be necessary to:

> "First, procure and present a survey from the Surveyor General of California to the effect that said lands had never been conveyed by the State prior to the conveyance thereof to the City of Los Angeles, and second, a certificate from the city clerk to the effect that said lands had never been conveyed by the said city and that there is no record of any such conveyance in the office of the city clerk other than the one to the United States government. Third, a further certificate of the City Abstractor *tracing the title from the State through the City* to the United States government and showing clear of any claim, encumbrance, or prior conveyance, and *a showing as to how the State came into possession of the land.*"

8. Pursuant to such communication of May 11, 1915, the City of Los Angeles furnished the certificates of title as requested. In addition the City of Los Angeles advised the United States Attorney in writing that *the State of California came into possession of the said land by virtue of her sovereignty and under the Act of Admission of September 9, 1950.*

9. On the foregoing showing the Attorney General of the United States passed his opinion that the City of Los Angeles held title to the tide and submerged lands within her boundaries then being conveyed and approved said title for transfer to the United States, as hereinbefore alleged. On October 16, 1915, the United States Department of Justice, through the office of the United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles in writing, stating in part as follows:

> "I have to advise that *the Attorney General has passed the title of the City of Los Angeles to the 9.75 acres* of land in the outer harbor at Los Angeles, California, which the City of Los Angeles had been heretofore authorized to transfer to the United States government in exchange for a like amount of land lying on the westerly side of the entrance channel to the inner harbor of Los Angeles, *and has found the title good.*
>
> "Pursuant to his instructions, a deed from the City of Los Angeles to the United States has been placed of record and I understand that the actual exchange of the property took place sometime ago."

10. The mayor of the City of Los Angeles, on behalf of the City of Los Angeles, executed a deed dated August 16, 1913, granting to the United States of America said

9.75 acre parcel of submerged lands lying adjacent to and southerly of the submerged lands in front of San Pedro Military Reservation, as aforesaid. Said deed recited that it was made pursuant to the Act of Congress approved July 25, 1912, as aforesaid. The granting clause thereof reads in part as follows:

> "Now, therefore, in consideration of the conveyance by the Secretary of War to the City of Los Angeles, California, of all the right, title and interest of the United States in and to that portion of *the submerged land* around the military reservation of Deadmans Island *acquired by the United States under act of the Legislature of the State of California approved March 9, 1897,* which lies west of the westerly pierhead line of Los Angeles Harbor between station fifteen, containing an area of nine and seventy-five one-hundredths acres, more or less, and of the sum of One Dollar, the receipt whereof is hereby acknowledged, the City of Los Angeles, a municipal corporation of the State of California, hereby grants and conveys to the United States of America, its successors and assigns, all that portion of the *submerged land belonging to said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of nine hundred and fifty and fifty-three one hundredths feet on West Channel, and lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation, the lands hereby conveyed being situate in Los Angeles County in the State of California and being included within metes and bounds as follows: * * *"

Said deed was duly recorded at the request of the United States District Engineer's Office on October 15, 1915, in Book 6136, page 181, of Deeds in the Office of the County Recorder of Los Angeles County, California.

11. Concurrently with the delivery of the deed mentioned in the last paragraph hereof, the United States Secretary of War, on behalf of the United States, pursuant to said Act of Congress of July 25, 1912, executed and delivered a deed granting and conveying to the City of Los Angeles the title of the United States in and to that portion of the submerged lands around the Military Reservation at Deadman's Island granted to the United States by the Act of the California Legislature on March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor, containing 9.75 acres of submerged lands. Said deed is dated September 3, 1915, and recites that the Secretary of War was authorized by the Act of July 25, 1912, to make such grant in exchange for the aforesaid grant from the City of Los Angeles to the United States of an equal area of submerged land. Said deed further recites that the city had conveyed its area to the United States and that the title to said land so conveyed to the United States had been approved by the Attorney General of the United States, reciting, in part, as follows:

> "Whereas, the City of Los Angeles, a municipal corporation of the State of California, has by deed duly executed and acknowledged, conveyed to the United States of America an approximately equal area of submerged land of said City in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of nine hundred and fifty and fifty-three one hundredths feet on West Channel, and lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation, as provided in said Act of Congress; *and the title to the land so conveyed to the United States has been approved by the Attorney General of the United States.*"

The granting clause of said deed then specifies that the lands granted to the City are those submerged lands acquired by the United States from the State of California under the Act of March 9, 1897, reading, in part, as follows:

> "Now, Therefore, in consideration of the premises and of the sum of One Dollar, receipt whereof is hereby acknowledged, I, Lindley M. Garrison, Secretary of War, hereby grant and convey unto the said City of Los Angeles, California, ~~its~~ successors and assigns, all the right, title, and interest of the United States in and to that portion of the *submerged land* around the military reservation of Deadmans Island, in the County of Los Angeles, and State of California, *acquired under act of the Legislature of the State of California, approved March 9, 1897,* which lies west of the westerly pierhead line of Los Angeles Harbor between station fifteen, as established by the Secretary of War July 29, 1908, and station twelve, as established May 31, 1911, and containing an area of nine and seventy-five one-hundredths acres, more or less."

Said deed was recorded at the request of the City of Los Angeles on October 22, 1915, in Book 6124 of Deeds, page 335, in the Office of the County Recorder of Los Angeles County, California.

(XI)

A further act of recognition on the part of the United States of America of the title of the City of Los Angeles, as grantee from the State of California, of a portion of the submerged lands in the Pacific Ocean and Bay of San Pedro, consists of a second exchange in the years 1925-1927 by the United States of a 61.98 acre tract of sub-

merged lands which it acquired from the State of California by the Act of the California Legislature of March 9, 1897, as aforesaid, for a grant of a like acreage of submerged lands from the City of Los Angeles, as follows:

1. In the year 1923, it was proposed to widen the Entrance Channel to the Los Angeles Inner Harbor to a width of approximately 1000 feet. In order to do so, it was necessary to remove Deadman's Island, which at that time stood in the way to the approach to such a widened Entrance Channel. The United States proposed that in lieu of its land on and around Deadman's Island which it would lose as a result of the widening of the Entrance Channel, the City of Los Angeles deed to the United States an equivalent area of submerged lands lying in the Pacific Ocean and Bay of San Pedro easterly of Deadman's Island, which area the United States proposed to reclaim and, with other areas granted by the State of California by the Act of March 9, 1897, as aforesaid, to form into proposed Reservation Point for the housing of quarantine, Coast Guard, and other governmental facilities.

2. In his report to the Chief of Engineers, dated April 15, 1924, the United States District Engineer at Los Angeles reported and recommended (House Document No. 349, *supra,* at pages 38-39), in part, as follows:

> "16. *Reclaiming Government land at Reservation Point.—By act of legislature, the State of California granted to the United States parcels of land extending from high-water mark out to 300 yards beyond low-water mark,* lying adjacent and contiguous to such lands of the United States in California as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved

by the United States for any military or naval purposes or for defense. *The United States has claim to land of approximately 36 acres around Reservation* Point and lying easterly of the probable future 1,000-foot channel.

"17. Provision should be made at this time for modifying the boundaries of the present Government holdings, so an exchanged area as indicated below may be deeded to the United States. Such modification would also have the effect of providing a Government reservation rectangular in plan instead of being bounded by numerous arcs. Before reclamation work is begun, the *city should grant to the United States title to the new area in lieu of the present legislative grant.* I am informed that the city is willing to make this exchange if desired by the United States."

The Board of Engineers for Rivers and Harbors reviewed the reports of the District Engineer and the above recommendation for widening the entrance channel and exchanging parcels with the City of Los Angeles, and reported to the Chief of Engineers under date of May 6, 1924, and recommended (House Document 349, *supra,* page 11), in part, as follows:

"In this connection the board points out that the widening of the entrance channel from 550 to 1,000 feet, as recommended above, will involve cutting away a portion of the present holdings of the Government at Reservation Point. Irrespective, therefore, of what action is taken on the proposal for reclamation, *local interests should transfer to the United States an area adjoining* the existing Federal holdings, equal to that cut away, this to be a condition precedent to the widening of the channel."

In its ultimate recommendations, the said Board of Engineers for Rivers and Harbors, in its said report of May 6, 1924 (House Document No. 349, *supra*, at page 16), recommended, among other things, that the existing project for the improvement of Los Angeles Harbor be modified to provide, among other things, for widening the entrance channel to 1,000 feet with a depth of 35 feet

> ". . . provided that local interests shall take the following action as items of cooperation:
>
> "(a) *Cede to the United States,* in lieu of that portion of the military reservation at Reservation Point which will be required for widening the main entrance channel, *an equivalent area to the east,* adjoining the present Federal holdings."

The Chief of Engineers, in his report and the Secretary of War, in his report to the Committee on Rivers and Harbors of the Congress, under date of June 2, 1924, made the same recommendation with respect to widening the entrance channel and exchanging the Government lands for submerged lands of the City of Los Angeles.

2. The River and Harbor Act approved by Congress on March 3, 1925, adopted the foregoing report submitted in said House Document No. 349, among other things, for the widening of the Main Entrance Channel of Los Angeles Harbor upon condition that the City of Los Angeles cede to the United States in lieu of that portion of the Military Reservation at Reservation Point required for widening the main entrance channel, an equivalent area to the east adjoining the present Federal holdings.

3. Pursuant to the Charter of the City of Los Angeles and Ordinance No. 54673, approved April 19, 1926, there was submitted to the qualified electors of the City of Los Angeles at a special municipal election held on April 30,

1926, the proposition of authorizing the grant by the City of Los Angeles to the United States of a 61.98-acre parcel of tide and submerged lands lying adjacent to and easterly of Reservation Point (formerly Deadman's Island Military Reservation). The electors of the City of Los Angeles, at said election, authorized such grant by the City of Los Angeles to the United States.

4. On August 4, 1926, the City Council of the City of Los Angeles passed its Ordinance No. 55639, thereby granting said 61.98-acre parcel of tide and submerged lands to the United States of America and thereby authorized the mayor of the City of Los Angeles, on behalf of the City, to execute a deed granting to the United States said 61.98-acre parcel of tide and submerged lands. Said Ordinance recited, among other things, the 1897 grant to the United States by the Legislature of the State of California of the submerged lands around Deadman's Island, reading, in part, as follows:

> "WHEREAS, pursuant to act of the legislature of the State of California approved March 9, 1897, Statutes 1897, page 74, the tide and *submerged lands owned by said state* within a distance of 300 yards beyond low water mark surrounding Deadman's Island or Reservation Point were ceded by said state to the United States of America to be used for military, naval or defense purposes only so long as said island should be held by said United States for such purposes; . . ."

Said Ordinance further recited the automatic divestment of title of the United States to said submerged lands around Reservation Point, pursuant to the Act of March 9, 1897, upon abandonment by the United States of said

area for military or naval purposes, reading, in part, as follows:

> "WHEREAS, the widening of said main channel will result in the dredging away of said Reservation Point which will become a part of said widened channel, and *the United States will thereby ipso facto become divested of title to the tide and submerged lands surrounding Reservation Point acquired pursuant to said Act* of the legislature of the State of California approved March 9, 1897, by reason of the same being abandoned for military, naval or defense purposes, and the deed from the City of Los Angeles authorized at said special municipal election and by this ordinance is required for the purpose of conveying to the United States a rectangular area lying just easterly of the new main channel in lieu of the lands now held by said United States which will be surrendered in the widening of said main channel; . . ."

Said Ordinance also recited the authorization from the Legislature of the State of California approved May 28, 1913, authorizing municipal corporations to which tide and submerged lands had been granted by the State of California, to make certain grants thereof to the United States, reading, in part, as follows:

> "WHEREAS, the Legislature of the State of California, at the Fortieth Session of said Legislature, beginning January 6, 1913, passed an act which authorizes and empowers any municipal corporation of said state to which tide lands and submerged lands,, situated within the limits of such municipal corporation, had been granted by the State of California, to grant portions of such lands in accordance with the terms of said act, to the United States for public purposes of the United States; and which said act was

approved by the Governor of California May 28th, 1913, and went into effect August 11th, 1913; . . ."

Said Ordinance thereupon granted to the United States

"that certain parcel of tide and submerged lands situate in that portion of Los Angeles Harbor known as the outer harbor [particularly describing said tract of submerged lands] reserving to the City of Los Angeles the right to use, for public highway purposes, an area 100 feet wide and 1000 feet long across the northerly end of said parcel contiguous to the northerly boundary thereof, together with the right to maintain and operate public ferry landings at each end of said highway; containing 61.98 acres, exclusive of said area 100 feet wide and 1000 feet long."

5. On August 4, 1926, the City of Los Angeles, by its mayor, executed a grant deed to the United States of America, granting and conveying to it said 61.98-acre parcel, said deed reading, in part, as follows:

". . . The City of Los Angeles . . . hereby grants and conveys to the United States of America that certain parcel of tide and submerged land *belonging to the City of Los Angeles* . . . . [describing said parcel and reserving the highway and ferry landing areas]."

6. Under date of September 6, 1927, the United States of America accepted in writing said deed from the City of Los Angeles by appending its acceptance thereof in writing as a part of said grant deed, which acceptance reads, in part, as follows:

"Dated September 6, 1927

"The within deed, conveying to the United States of America certain tide and submerged lands situated at Los Angeles Harbor, in the City of Los Angeles, California, being a portion of the E.½ of Sec. 19 and W½ of Sec. 20, T. 5 S., R. 13 W., San Bernardino, B & M, authorized by River and Harbor Act of March 3, 1925, 68th Congress, House Document 349, *be and the same is hereby accepted on behalf of the War Department of the United States of America.*

C. P. Gross,
C. P. Gross,
Major, Corps of Engineers, District Engineer."

Said deed was recorded on September 15, 1926, in Book 7033, page 279, Official Records of Los Angeles County, California.

7. The title conveyed by said deed from the City of Los Angeles to the United States, covering said 61.98-acre parcel of submerged lands, as aforesaid, was reviewed by the United States Attorney, in advance of its acceptance by the United States, as aforesaid, and said United States Attorney rendered his written opinion to the effect that the City of Los Angeles was the owner of the submerged lands described in said deed and thereby conveyed to the United States, in accordance with his duty under the Act of Congress requiring a favorable title opinion from the United States Attorney prior to the acquisition of title by the United States.

8. At the request of the United States a certificate dated February 4, 1927, was prepared by the Official Searcher of Titles for the City of Los Angeles certifying that he had searched the records of Los Angeles County,

found no transfer of the parcel of tide and submerged lands containing said 61.98 acre tract to be deeded to the United States, and there was no claim or encumbrance of any kind against said parcel. Under the same date a certificate of the County Clerk of Los Angeles County was prepared certifying to the proceedings authorizing the execution and delivery of a deed granting to the United States said 61.98 acre parcel and certifying there was no record in his office of any prior conveyance by the City of Los Angeles of said parcel. Said certificates, together with exact copies of all the proceedings leading up to and including the authorizations to the execution of said deed and also all proceedings in connection with the 1912-1915 exchange of said 9.75 acre parcel, were delivered to the United States Attorney at Los Angeles and receipt by him was acknowledged on March 8, 1927.

9. On March 8, 1927, the United States Attorney at Los Angeles requested that the City of Los Angeles obtain a certificate of title to the 61.98 acre parcel of submerged lands to be transferred to the United States. In response thereto the City Attorney of the City of Los Angeles addressed a communication dated March 17, 1927, to the United States Attorney in Los Angeles explaining that a certificate of title procured from a commercial title company would not furnish the necessary data for the United States Attorney to pass upon the title to the City of Los Angeles to said submerged parcel and explained the reasons therefor, said letter reading, in part, as follows:

> "On May 8, 1912, the voters authorized the grant to the United States of a parcel of land containing 9.75 acres adjacent to the lower reservation at Fort MacArthur, in exchange for which the government released to the city an equal area on the west side of the main entrance channel lying within the 300 yard

circle around Deadmans Island which the State of California ceded to the federal government under authority of the act of the legislature approved March 9, 1897 (Statutes 1897, page 74). This change was finally effected by the exchange of deeds, and I enclose herewith copy of letter written by United States Attorney Robert O'Connor under date of October 16, 1915, advising us that the Attorney General had passed upon the title to the tidelands deeded to the government and had found the same good. At that time a transcript of proceedings and certificates identical in form with those recently submitted to you in connection with the pending grant was forwarded through Col. C. R. McKinstry, engineer then in charge of this district, and no certificates of title were required either by the government or the city. I was in this office at that time, and in our report submitting the transcript and certificates we made the following statements:

> "Deadmans Island is a part of the original government domain in California. It was never included in any Spanish or Mexican grant and was never granted by the United States to any one, but has been reserved for purposes of public defense and other purposes of the United States by the federal government. In 1897 an act was passed by the legislature of California relinquishing or *ceding to the United States the title of the state to tidal lands adjacent to the lands held by the United States for military purposes, for a distance of 300 yards out from the low tide line. Such tidal lands were owned by the State of California by virtue of her sovereignty, and were acquired by the State of California upon her admission into the Union.* The submerged lands around Deadmans Island be-

came, therefor, the property of the United States under the act of 1897 (Statutes 1897, page 74). There is absolutely nothing of record with reference thereto other than the act referred to, which was approved by the governor of California March 9, 1897. I have gone into the matter quite thoroughly and I do not find that the title of the United States to the tidal lands surrounding Deadmans Island, and for a distance of 300 yards out from the low tide line of the island, has ever been questioned. * * *

"*With reference to the title of the City of Los Angeles to the submerged lands* included within the rectangular area lying easterly of Deadmans Island which the government proposes to reclaim and use for general public purposes, *the rectangle, as you know, includes a portion of the submerged lands ceded to the United States for military purposes under the 1897 act* referred to above lying within 300 yards of the low tide line of the Island. I have in my files a copy of the *map recorded by the federal engineer accepting and claiming the submerged land surrounding Deadmans Island under authority of the act of 1897,* so that there can be no question but what at that time *the government was satisfied with the state's authority to cede the submerged lands under the 1897 act.*

"The rectangular area proposed to be deeded to the government includes *submerged land now belonging to the City* in addition to that which is included within the 300 yard line mentioned above, and the transcript and certificate sent you show that *the State of California granted to the City of Los Angeles May 1, 1911, all of the right, title and interest held by the state by virtue of its sovereignty in and to*

this particular submerged land as well as all other tide and submerged lands within the limits of the city. These lands were ceded by the Mexican government to the United States pursuant to the treaty with Mexico after the war of 1845 with that country, and it is a *matter of tideland law and not of statute law that the United States held title to tide and submerged lands in trust for the benefit of the states which were later formed along its boundaries, so that upon the admission of California to the Union in 1850 the title to these lands was vested in the state by virtue of its sovereignty until granted to the City of Los Angeles in 1911.* There being, therefore, no record of patents, conveyances or transfers involved as touching these lands consequently there is no chain of title of record. It is a matter of law and not of record that these tide and submerged lands came to the City of Los Angeles from the Mexican government through the United States and the State of California. Under the circumstances I think you will agree with me that a certificate of title, as the same is customarily used in the business world to clearly indicate that the records in the County Recorder's office show the title to certain property to be vested in certain persons, could not be used in this case to prove title. It being a matter of legal opinion, we have therefore submitted to the government, through you, all documents necessary to show the title in the City of Los Angeles and its authority to make the grant to the United States.

"You are probably familiar with the reason for including in the deed of the city all of the land within the rectangle which includes a portion of that now held by the United States under the Act of 1897, which is done because the grant by the state under the 1897 act confined the use of the government to

military purposes and it being its plan to remove Deadmans Island, which would result in the release of the tide and submerged lands acquired for military purposes under the 1897 act, the city is therefore including within its grant all of the land within the rectangular area for all public purposes of the United States.

"I trust that with this report and the papers you already have the Attorney General will be in a position to approve the acceptance of the proposed deed the same as was done in the former transfer of the 9.75 acre parcel.

Yours very truly,

JESS E. STEPHENS,
City Attorney

By CLYDE M. LEACH (Signed)
Assistant City Attorney."

10. The Attorney General and the United States Attorney at Los Angeles were satisfied with the title information thus furnished by the City Attorney of the City of Los Angeles. On June 30, 1927, the Attorney General of the United States, William D. Mitchell, passed his written opinion to the Secretary of War finding title to the 61.98 acres parcel of submerged land to be in the City of Los Angeles, said opinion reading in part as follows:

"I have the honor to report that I have examined the abstract of title to 61.98 acres of land in the City of Los Angeles, County of Los Angeles, which are proposed to be purchased by the Government, under the provisions of the River and Harbor Act of March 3, 1925, 68th Congress, Docket # 349, the total consideration being $1.00.

* * * * * * * *

"The abstract contains 29 pages and was certified to by J. T. Saunders, Official Searcher of the City of Los Angeles, with certificate attached, dated February 4, 1927, which certificate is satisfactory. A map of the land made by the engineers of the War Department accompanies the abstract.

"From an examination of the abstract, *I find the title to said land in the City of Los Angeles.* When the undated deed accompanying the abstract has been signed by the City of Los Angeles, acknowledged according to the laws of the State of California, and placed of record, and another certificate has been attached to the abstract showing the recording of said deed, the payment of all taxes, the examination of the record brought down to a date subsequent to the recording of the deed, that nothing has been done to affect the title to this land since the date of making the present certificate, and the abstract shall have been returned to me, I will then approve the title.

"The abstract and related papers are enclosed herewith.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General."

11. Pursuant to the requirement of the Attorney General of the United States as aforesaid a supplemental certificate was prepared by the Official Searcher of Records of the City of Los Angeles under date of September 19, 1927, and was furnished to the United States Attorney.

12. Portions of the reclaimed submerged lands which were released to the City of Los Angeles by Los Angeles and Salt Lake Railroad Company in the year 1921, as aforesaid, and by Bethlehem Shipbuilding Corporation,

Ltd., in the year 1925, as aforesaid, were included in and were a part of the submerged lands, filled or unfilled, granted to the United States by the City of Los Angeles by said deed dated August 4, 1926, as aforesaid.

(XII)

The United States of America asserted and declared in the year 1925 that the City of Los Angeles was the owner of the submerged lands in the Pacific Ocean and Bay of San Pedro in front of Terminal Island, which were planned to be reclaimed with materials dredged from the Inner Harbor in the improvement thereof as planned and approved by Act of Congress of March 3, 1925.

1. The United States District Engineer at Los Angeles reported to the Chief of Engineers under date of April 15, 1924, in recommending the extension of the breakwater in front of Terminal Island, upon condition that the City of Los Angeles and the City of Long Beach contribute toward the cost of such breakwater extension for the reason that said cities would receive a benefit in the protection by the breakwater of the submerged lands proposed to be reclaimed and asserted that the cities would be the owners thereof, saying (House Document No. 349, *supra*, pp. 46-47) that:

> "Los Angeles would secure better protection for the entrance to its main channel, which also would permit widening that channel to 1,000 feet opposite Reservation Point; it would also receive protection for a large area of valuable and reclaimed on the south side of Terminal Island, ***and to which the city would have title.*** . . . Land on the south shore of Terminal Island can be reclaimed very cheaply, as incidental to dredging operations in the inner harbor. Between Fish Harbor and the Silt Diversion

Channel, under protection of the breakwater extension, perhaps 1,000 acres could be so reclaimed. A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1,000 acres. *Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.*"

2. Said report of the United States District Engineer was adopted by the Chief of Engineers who, in turn, forwarded said report to Congress as House Document No. 349, *supra*. Congress adopted the recommendations of the District Engineer and Chief of Engineers contained in said House Document No. 349 and passed its Act of March 3, 1925, making appropriations for the improvements as thus recommended for the Los Angeles Outer Harbor and Inner Harbor as well as for the Long Beach Harbor, as hereinabove alleged.

(XIII)

Another act of recognition on the part of the United States of the title of the City of Los Angeles in and to the submerged lands in the Pacific Ocean and Bay of San Pedro, in connection with a so-called "147-acre Tract" (sometimes referred to as "146-acre Tract," also as a "166-acre Tract," also as the "171-acre Tract," and sometimes as the "Submarine Base Site"), is the following:

1. Pursuant to the direction of an Act of Congress requiring investigation and report concerning the establishment of submarine and aviation bases on the Pacific Coast and elsewhere in the United States, the Commission on Navy Yards and Naval Stations filed its report with the President of the United States on January 31, 1917, which report the President transmitted on February 9, 1917, to the Congress of the United States, as reported

in House Document No. 1946, Volume 3, 64th Congress, Second Session.

2. Said Commission on Navy Yards and Naval Stations examined the Los Angeles Harbor as a potential site for a Submarine Base. The City of Los Angeles offered 8 different tracts of tide and submerged lands in its Outer Harbor and Inner Harbor for consideration by said Commission and for selection by and transfer to the United States by the City. In its report to the President and to Congress with respect to the title of said eight parcels of tide and submerged lands in the Outer and Inner harbor of Los Angeles, said Commission reported these titles to be vested in the City of Los Angeles, stating that:

> "3. Eight sites were offered for consideration by the authorities of the city of Los Angeles. These sites are indicated on a map of the port of Los Angeles, attached at Appendix C5. They are also described generally in the booklet on Los Angeles Harbor, attached as Appendix C4. Of these eight sites, *the titles of Nos. 1, 3, 4, and 8 are vested in the City of Los Angeles by cession from the State of California;* Nos. 5, 6 and 7 are, in part, claimed by the city, but are much cut up by private claims. Parcel No. 2, containing 39 acres is already in the possession of the United States Government, *except a small triangular corner consisting of about 6 acres, title to which is vested in the City of Los Angeles.*
>
> "31. Each of the sites was inspected by the commission and, by gradual elimination, No. 1 was found to possess, in a degree higher than any of the others, characteristics which would permit its use as a training and operating base for submarines, and an operating base for aeroplanes; and, also as a possible location for a large dry dock and emergency repair plant for ships of the larger size, should the

occasion ever arise when same should be considered necessary. *Site No. 8, while possessng certain advantages for an aviation operating base, is very much exposed to the sea,* and is, therefore, impracticable for development as a submarine base. Sites Nos. 6 and 7 are not satisfactory as to title and are, moreover, approached only through the inner harbor, being shut off from the sea by privately owned property and railroad tracks. Even if these sites were selected and the intervening property acquired, they would still be subject to exposed conditions similar to site No. 8. Site No. 5 is subject to the same disadvantages as to title as Nos. 6 and 7. It is also only possible to approach this site through the inner harbor, which makes its use practically prohibitive for hydroplanes and undesirable as a submarine base. Sites Nos. 3 and 4 are well located as to protection from wind and sea but are only susceptible of approach through the inner harbor, a disadvantage which has already been commented upon. Site No. 2 is very much exposed to the sea and regarded as unsuitable in every respect for development as a submarine base or aviation operating base. A portion of it, moreover, has already been transferred to the Treasury Department for use as a quarantine station site and another portion has been reserved for the installation of a seacoast battery." (H. D. No. 1946, *supra,* pp. 22-23.).

Said Parcels Nos. 1 to 8, described in said Report, are located as follows:

(i) Parcel No. 1 referred to in the quotation above is the "166-acre" tract of submerged lands

finally selected by this Commission and recommended for the Submarine Base Site and lies in the Pacific Ocean and Bay of San Pedro immediately adjoining the government breakwater and West Channel in the Outer Harbor.

(ii) Parcels Nos. 3 and 4 are located in the West Basin in the Inner Harbor.

(iii) Parcels No. 8 is a "152-acre" parcel of submerged lands then being and since having been reclaimed, lying in the Pacific Ocean and Bay of San Pedro on the ocean front of Terminal Island immediately easterly of the present Fish Harbor and now constituting a part of Reeves Field or Roosevelt Field, hereinafter mentioned.

(iv) Parcels 5, 6, and 7 adjoin the East Basin in the Inner Harbor.

(v) Parcel No. 2, containing "39 acres," was in 1917, as to 33 acres thereof, owned by the United States by virtue of the grant from the State of California of March 9, 1897 above mentioned, conveying a 300 yard strip of submerged land around Deadman's Island, and as a result of the exchange of 1912-1915 of the 9.75 acre parcels between the United States and the City of Los Angeles above mentioned. The other six acres of said Parcel No. 2 then owned by the City of Los Angeles, lie westerly of and adjoining the 33 acre parcel of submerged lands lying in the Pacific Ocean and Bay of San Pedro.

A map prepared by said Commission as a part of House Document No. 1946, depicting said Parcels Nos. 1 to 8, inclusive, is set forth as follows:

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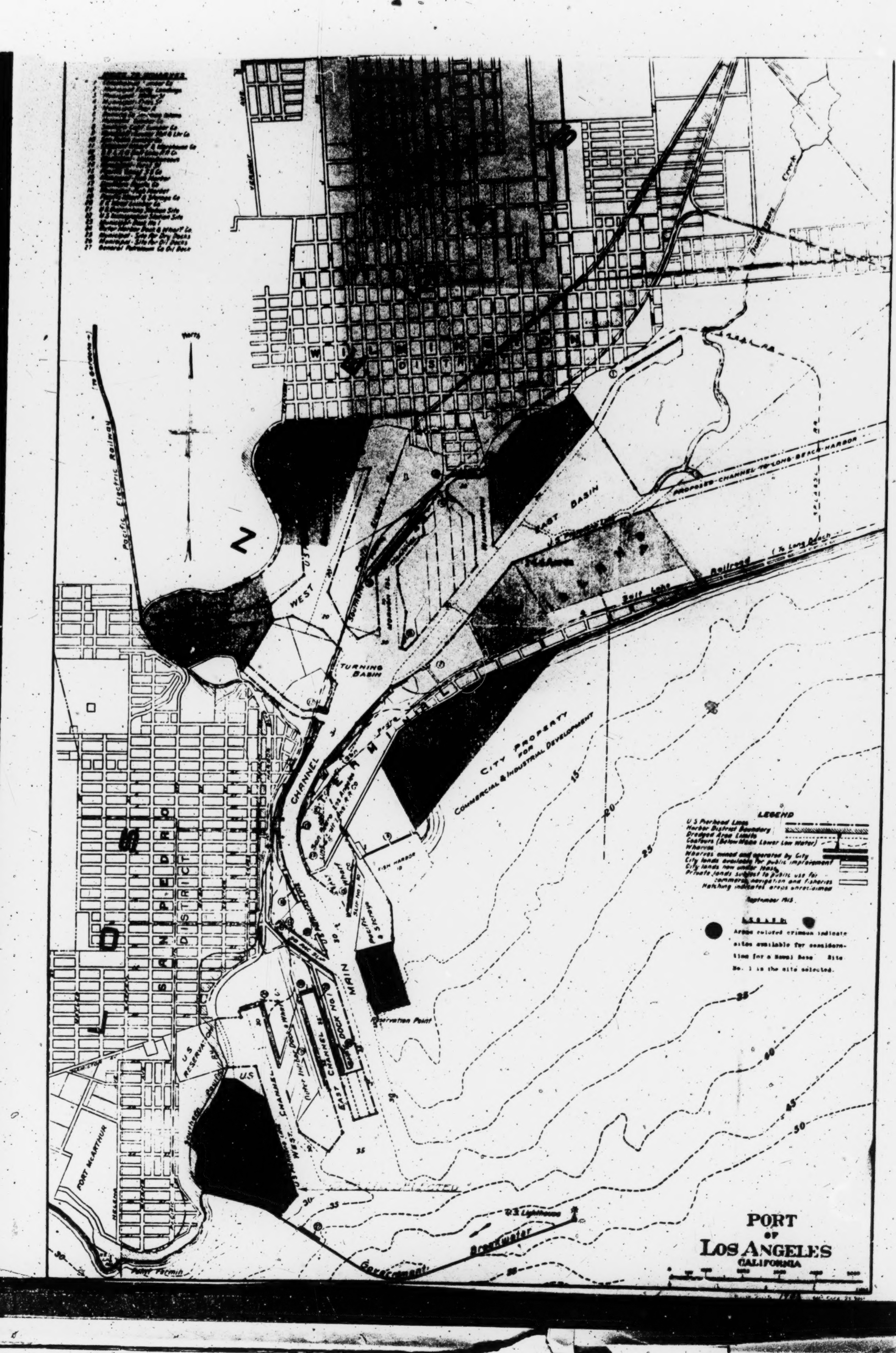
PORT
OF
LOS ANGELES
CALIFORNIA
LEGEND
U.S. Pierhead Lines
Harbor District Boundary
Dredged Area Limits
Contours (Below Mean Lower Low Water)
Wharves
Wharves owned and operated by City
City lands available for public improvement
City lands now under lease
Private lands subject to public use for commerce, navigation and fisheries
Hatching indicates areas unreclaimed
September 1943.
LEGEND
Areas colored crimson indicate sites available for consideration for a Naval Base. Site No. 1 is the site selected.
SAN PEDRO DISTRICT
WEST BASIN
EAST BASIN
TURNING BASIN
MAIN CHANNEL
CITY PROPERTY FOR COMMERCIAL & INDUSTRIAL DEVELOPMENT
PROPOSED CHANNEL TO LONG BEACH HARBOR
Pacific Electric Railway
Salt Lake Railroad
Reservation Point
FISH HARBOR
U.S. RESERVATION
FORT MCARTHUR
Point Fermin
Breakwater
23 Lighthouse
EAST CHANNEL
WEST CHANNEL
NORTH

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3. The report of said Commission discussed and discarded each of the other 7 sites and then approved and recommended Site No. 1, and in that connection stated (H. D. 1946, *supra*, pp. 23-24):

"Site No. 1 consisting of 166 acres, that lie along the shore immediately inside of the inner end of the breakwater in the outer harbor, is readily accessible from the sea and is susceptible of satisfactory development as a main submarine base and as an aviation operating base. *In common with each of the other sites noted,* Site No. 1 *is composed of tide and submerged lands requiring reclamation in order to make it suitable for use.*"

* * * * * * * *

"33. Site No. 1 has been variously referred to as a 146 or a 147 acre tract and as a 166-acre tract, owing to changes in the position of the harbor lines. The latter is the latest and correct information corresponding to present boundaries, and this amount of submerged land will be available. *Of the 166 acres about 130 lie above the 18-foot contour, as regards depth at mean lower low water,* and would require fill to the average amount of about 30,000 cubic yards per acre. Any plan of development would be along the lines of an interior basin, both to secure reasonably smooth water at all times as well as to reduce the necessary fill to a minimum. This fill can be arranged for best by obtaining a 'dry fill' that is available from the considerable amount of grading work under way in the vicinity, if action is taken promptly. The immediate reclamation of more than 50 acres, requiring about 1,400,000 cubic yards, is not necessary."

* * * * * * * *

"36. *The City of Los Angeles, through Mayor F. T. Woodman, offers to cede all of site No. 1, consist-*

ing of 166 acres, to the United States without charge, as confirmed by the unanimous action of the city council by resolution passed November 23, 1916, to the effect that the matter would be submitted to the voters, as required by the city charter, at the earliest practicable date after notice is received of the acceptance of this proposition. This resolution is attached as Appendix C8."

4. In the report contained in House Document 1946, page 62, the diagram of Parcel No. 1 contains this description and statement of the ownership by the City of Los Angeles.

"Area 166 acres. Water frontage 3,640 linear feet. Entire parcel (hatched area); *title in city of Los Angeles in trust for people, etc., by virtue of California Statutes 1911, 1256, for tide and submerged lands.*"

Said Report describing Parcel No. 2 below the diagram, states ownership thereof as:

"Area, 39 acres. Water frontage, 4,600 linear feet. Hatched area, 6 acres; *title in city of Los Angeles in Trust for people,* etc., *by virtue of California Statutes 1911, 1256, for tide and submerged lands.* Crosshatched area, 33 acres; title in United States Government, *being a portion of Deadman's Island Military Reservation, act of California Legislature,* March 9, 1897."

Parcel No. 8 is described in said Report, House Document 1946, page 71, following the diagram thereof as follows:

"Area 152 acres. Water frontage 7,000 linear feet. Entire parcel (hatched area); *title in city of Los Angeles by virtue of California Statutes 1911, 1256.* Salt Lake Railroad Co. has some claim on small rectangle at the north, extent of said claim being uncertain."

5. A municipal election was held by the City of Los Angeles on June 5, 1917, submitting to the qualified electors of said city the proposition of whether or not a grant of said "147-acre tract" should be made to the United States for said Submarine Base. Said election was called by ordinance of said city council adopted May 16, 1917, describing the proposition to be submitted to the electors as follows:

> "Shall the grant by the City of Los Angeles to the United States of America, for public purposes, of all or any portion of that certain parcel of land at Los Angeles Harbor designated as 'Site No. 1, comprising 171 acres more or less of submerged lands *owned by the City of Los Angeles* and fronting on the West Channel in the outer harbor', be authorized."

The electors of said city voted in favor of authorizing the grant to the United States of said submerged lands for said purpose.

6. On June 9, 1917 the Secretary of the Navy sent a telegram to the Board of Harbor Commissioners of the City of Los Angeles acknowledging its telegram announcing the favorable vote of the electors of the City of Los Angeles granting authority to convey said submerged lands to the Navy for said Submarine Base and stated that:

> "The Secretary of the Navy acknowledges with great pleasure the telegram of the Board of Harbor Commissioners which states that the City of Los Angeles has voted to empower its Mayor to give authority to transfer the permanent submarine base site to the United States Government. The Navy Department greatly appreciates the action of the people of the City of Los Angeles, and especially the spirit

of cooperation and generosity in the national emergency evidenced by their splendid gift. Josephus Daniels."

7. The Solicitor for the Navy Department, on September 15, 1917, addressed the Board of Harbor Commissioners of the City of Los Angeles, requesting that the Navy be furnished an abstract of title to the submerged lands constituting the Submarine Base Site, and stated that:

> "With reference to said submarine base site an abstract of title and copy of the proposed deed conveying to the government is necessary to be submitted to the Attorney General for his approval before expenditure can be made on the site thus acquired."

8. On December 26, 1917 the City of Los Angeles adopted its Ordinance No. 37781 (NS), thereby granting to the United States said "171-acre Tract" of submerged land and authorizing the Mayor of the City of Los Angeles, on its behalf, to execute a deed granting to the United States the lands described therein. Said ordinance provided in part as follows:

> "There is hereby conveyed to the United States of America, for use for public purposes, that certain parcel of *tide and submerged lands of the City of Los Angeles* . . . situate in that portion of Los Angeles inner and outer harbor and along and adjacent to the southerly end of the submerged lands in front of the San Pedro Military Reservation . . . [particularly describing said "171-acre Tract]."

9. Pursuant to request of the Solicitor of the Navy Department for the abstract of title to be furnished to the

Attorney General of the United States, a complete set of the proceedings leading up to and including the ordinance adopted December 26, 1917, and copies of the legislative grant of May 1, 1911 from the State of California to the City of Los Angeles of the tide and submerged lands within the boundaries of said city, and the Act of the Legislature of the State of California approved May 28, 1913 authorizing municipalities to grant to the United States portions of submerged lands within their boundaries theretofore granted to such municipalities by the State of California, were furnished to the proper officers of the Navy Department.

10. Several years elapsed after delivery of said certificate, abstract of title and said form of deed pursuant to said Ordinance No. 37781 (NS), during which time the United States never indicated to said city that the said abstract and said proposed form of deed were satisfactory or unsatisfactory, or that said deed if delivered would be acceptable to Congress, or that Congress would appropriate any funds for the improvements of said lands. Accordingly, and on August 27, 1923, the City Council of the City of Los Angeles adopted its Ordinance No. 46913 (NS) reciting the foregoing circumstances, and further reciting that the steady growth of commerce through the port of Los Angeles made it advisable that the city proceed without delay to improve all available water frontage in the harbor, and that, owing to the changed conditions, the "171-acre Tract" would now be devoted to commercial purposes. Thereupon said Ordinance No. 46913 (NS) revoked the grant to the United States of the tide and submerged lands and revoked, rescinded and annulled the authorization and direction to the mayor of the City of Los Angeles contained in said

Ordinance No. 37781 (NS) to execute a deed granting the same to the United States.

(XIV.)

Another act on the part of the United States in recognition of the title of the City of Los Angeles to the submerged lands in the Pacific Ocean and Bay of San Pedro relates to the reclamation by the United States Engineer Office of submerged lands in front of Fort McArthur in the year 1937, in the following manner:

1. On April 22, 1937 the United States Engineer Office at Los Angeles addressed a communication to the Board of Harbor Commissioners of the City of Los Angeles advising that the United States proposed to reclaim submerged lands adjacent to the West Channel in the Los Angeles Outer Harbor owned by the United States as a result of previous grants from the State of California to the City of Los Angeles. The City was thereby advised that the United States proposed to extend a retaining dyke then under construction around the area to be reclaimed

> "so as to include a triangular *piece of city-owned* land adjacent thereto designated as 'Area D' . . . . Your approval is requested on the operations proposed herein *in so far as city-owned lands* will be effected . . . ."

Accompanying said letter of April 22, 1937 was a drawing prepared by the United States Engineer Office entitled "File 64-1-23" dated March 30, 1937, "Fort McArthur, Retaining Dike Around Submerged Tideland Lower Reservation."

A copy of said File 64-1-23 is set forth as follows:

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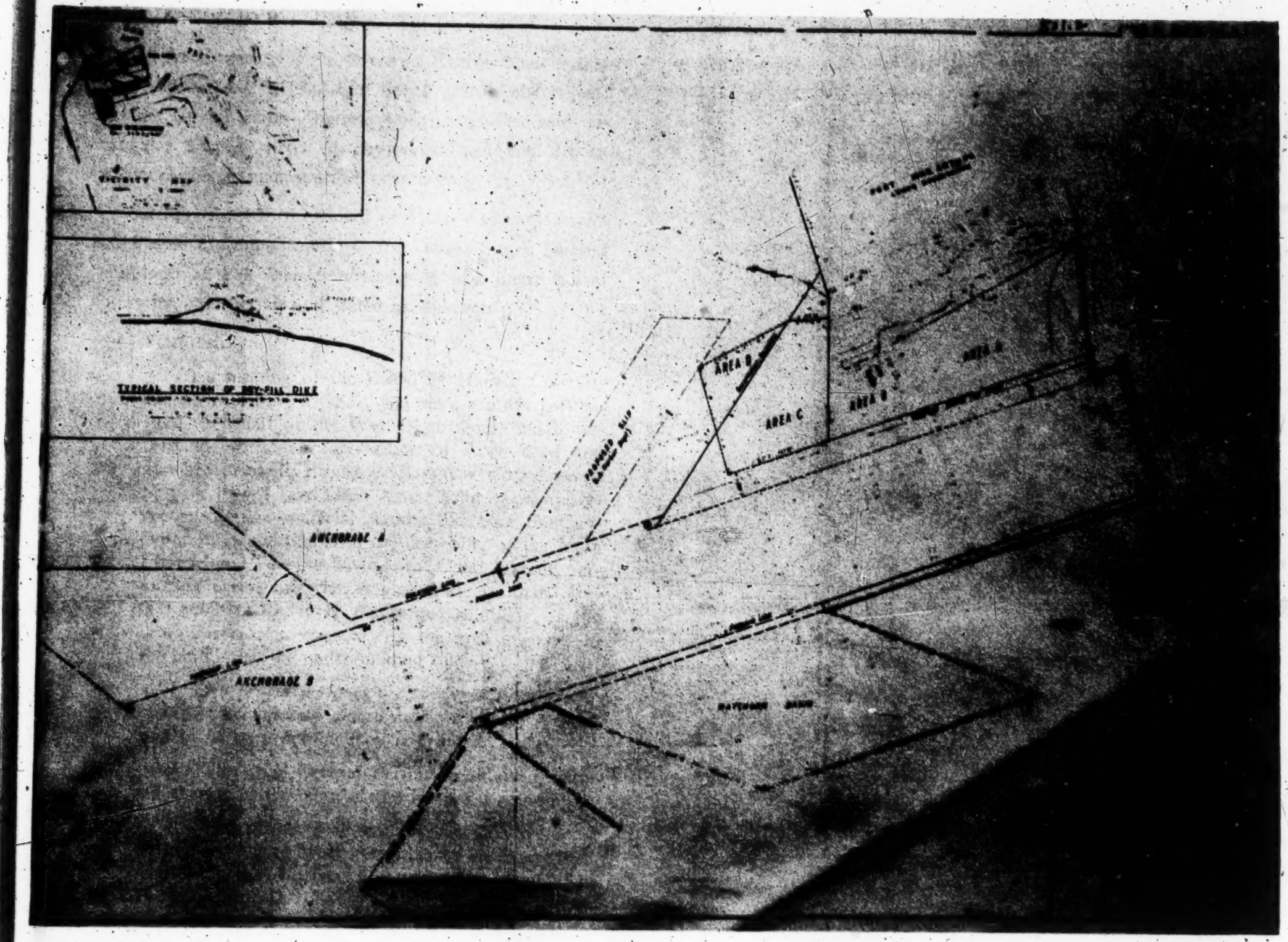
TYPICAL SECTION OF DRY-FILL DIKE
AREA B
AREA C
AREA B
ANCHORAGE A
ANCHORAGE B

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2. At a meeting of the Board of Harbor Commissioners held on May 5, 1937 said Board granted the request of the United States Engineer Office to enclose said triangular shaped parcel of city-owned land and deposit material therein upon specified conditions.

On May 5, 1937 the Board of Harbor Commissioners addressed a communication to the United States District Engineer at Los Angeles advising of said Board action granting said permit and stated as follows:

"Dear sirs:

"At a meeting of the Board of Harbor Commissioners held May 5, 1937, you were granted permission, on behalf of the War Department, and in accordance with your application of April 22nd and attached print, to enclose a triangular shaped parcel *of City owned land under water* by a dyke, and to deposit dredge material within the area thus enclosed, in connection with the deepening of the Main Channel and Turning Basin in the Outer Harbor, permitting excess material, estimated at less than 100,000 cubic yards, to be discharged southerly of the south reservation boundary in the area adjacent to the bluff, with the understanding that:

"1. *No property rights are conveyed to applicant in the parcel of City owned land for which permission to fill with dredge spoil is granted;*

"2. The usual General Permit be obtained, without charge, at the office of the Harbor Engineer;

"3. The permit shall not become effective *until written acceptance* of the terms hereof shall have been filed with the Harbor Engineer, City Hall, San Pedro, California."

Permit No. 53, Series 1937, was thereupon issued by the Los Angeles Board of Harbor Commissioners to the United States and written acceptance of the terms thereof was thereupon made by the United States District Engineer Office.

3. The following year on April 7, 1938 the United States Engineer Office addressed a further application to the Board of Harbor Commissioners for permission to deposit an additional amount of dredged material in the submerged lands adjacent to and southerly of the South boundary of Military Reservation of San Pedro. Said application referred to the permit issued to the United States by the Board of Harbor Commissioners on May 14, 1937, as aforesaid, and stated:

> "For depositing dredged material on *city owned submerged* lands southerly of the United States military reservation at Fort McArthur pursuant to the foregoing, it is requested that Permit 53 be modified to allow a deposit of 250,000 cubic yards of dredged material on said *city owned lands* adjacent to and southerly of the south boundary of the military reservation."

4. Pursuant to said request of the United States the Board of Harbor Commissioners on April 13, 1938 granted permission in accordance with said revised application. On May 13, 1938 the Board of Harbor Commissioners advised the United States District Engineer of the granting of said permit in accordance with said application of April 7, 1938, upon the same conditions specified in Permit No. 53 above set forth.

On or about April 13, 1938, the United States, acting by and through its War Department, accepted in writing the terms and conditions of said permit.

(XV)

Among acts of recognition on the part of the United States of America of the ownership and title of the City of Los Angeles in and to the submerged lands in the Pacific Ocean and the Bay of San Pedro, involving successive leases by the United States from the City of Los Angeles of airport property thereafter known as Reeves Field, are the following:

1. On March 14, 1928, the Commander in Chief of the Pacific Fleet of the United States Navy wrote to the City of Los Angeles and its Board of Harbor Commissioners that the basing in the Los Angeles Outer Harbor of certain naval carrier vessels required procurement of a landing place for naval planes and stated that the United States Navy had no funds available with which to provide airport facilities and requested the City to cooperate by making available such facilities in the harbor area.

2. On the same date of March 14, 1928, the Los Angeles Board of Harbor Commissioners replied and advised the Navy Department that a location for an airport on Terminal Island would be made available and that the Board would grant to the Navy a permit for the use of a large tract of land for a navy airport; and that the Board would make the necessary expenditures therefor

provided the use of the airport was not to be confined solely to the United States Navy.

3. On March 23, 1928, the City Council of the City of Los Angeles approved a plan for converting into an airport the land owned by the City on Terminal Island. Thereafter the Los Angeles Board of Harbor Commissioners proceeded with the construction of airport facilities and the reclamation and improvement of the land on Terminal Island for that purpose. By the year 1934 the City of Los Angeles had expended in the construction of jetties, sea walls, roadways and other airport facilities for the airport on Terminal Island a sum in excess of $1,073,000.

4. The entire airport property on Terminal Island thus constructed and improved from 1928 to 1934, as aforesaid, was, prior to reclamation and filling in front of Terminal Island, entirely submerged lands and part of the Pacific Ocean and Bay of San Pedro, situated in front of Terminal Island in a state of nature.

5. Said airport property on Terminal Island, formerly a part of the submerged lands of the Pacific Ocean, was the same as the "Parcel No. 8" or "152-acre parcel" also ("166-acre parcel," or "171-acre parcel") described in House Document No. 1946, *supra,* and by the Commission on Navy Yards and Naval Stations reported to Congress in the year 1917 as

> *"the titles of Nos. . . . 8 are vested in the City of Los Angeles by cession from the State of California,"*

as above alleged.

6. The Navy Department during the years 1928-1929 made use of the airport facilities being improved and constructed by the City of Los Angeles. During the years 1930-1932 the United States Navy ceased to use said airport. On or about March 27, 1933, the City of Los Angeles leased said airport to the United States Coast Guard for a period of one year, likewise leasing to the United States Coast Guard a four-acre tract adjoining the airfield to be used for erection of administration buildings, shops, hangars and other incidental purposes.

7. On June 10, 1935, the Commander in Chief of the United States Fleet, Admiral Reeves, addressed a communication to the Mayor of the City of Los Angeles and requested the City to lease to the Navy Department a portion of Terminal Island for use by Navy aircraft and proposed that the lease contain an option giving the Navy the right to purchase the property at its then assessed value.

8. Formal application was made by the Acting Secretary of the Navy on July 18, 1935, to the Los Angeles Board of Harbor Commissioners for a permit to use the airport site on Terminal Island. Said application made by the Acting Secretary of the Navy reads in part as follows:

> "Application is hereby made for the right to use, for a period not exceeding 30 years, *those certain lands* at Los Angeles Harbor, *belonging to the City of Los Angeles,* as shown on map attached hereto, and more particularly described as follows * * * for the purpose of occupying a site on Terminal

Island, Los Angeles, California, as an airport for the use of the Fleet."

9. Pursuant to said request the Board of Harbor Commissioners executed a Permit-Lease to the United States reciting in part as follows:

> "Whereas the United States of America, through the Navy Department, has submitted an application to the Los Angeles Harbor Department, City of Los Angeles, California, for permission to use a site on Terminal Island *owned by said City of Los Angeles,* as an airport * * *"

Said lease thereby granted to the United States permission to occupy and use

> "the following described lands on Terminal Island *owned by the City of Los Angeles, California*"

particularly describing the leased premises and reciting that it contained 328.5 acres, more or less. *Approximately 100 acres thereof was then under water of the Pacific Ocean and Bay of San Pedro.* Said lease excepted and reserved therefrom a certain parcel containing 3,000 square feet occupied by the Board of Public Works of the City of Los Angeles under Harbor Department Permit No. 391, dated September 21, 1910, for sewer disposal purposes. Said lease likewise excepted and reserved therefrom a parcel containing 5910 square feet occupied by private parties under Harbor Department Order No. 2152 adopted August 6, 1930, for garage purposes.

Said permit lease was for a term ending June 30, 1936, with an option to the government to renew the same annually by giving thirty days notice, but not to extend beyond June 30, 1965.

Said permit lease contained a further provision for restoration of possession to the City upon termination, reading in part as follows:

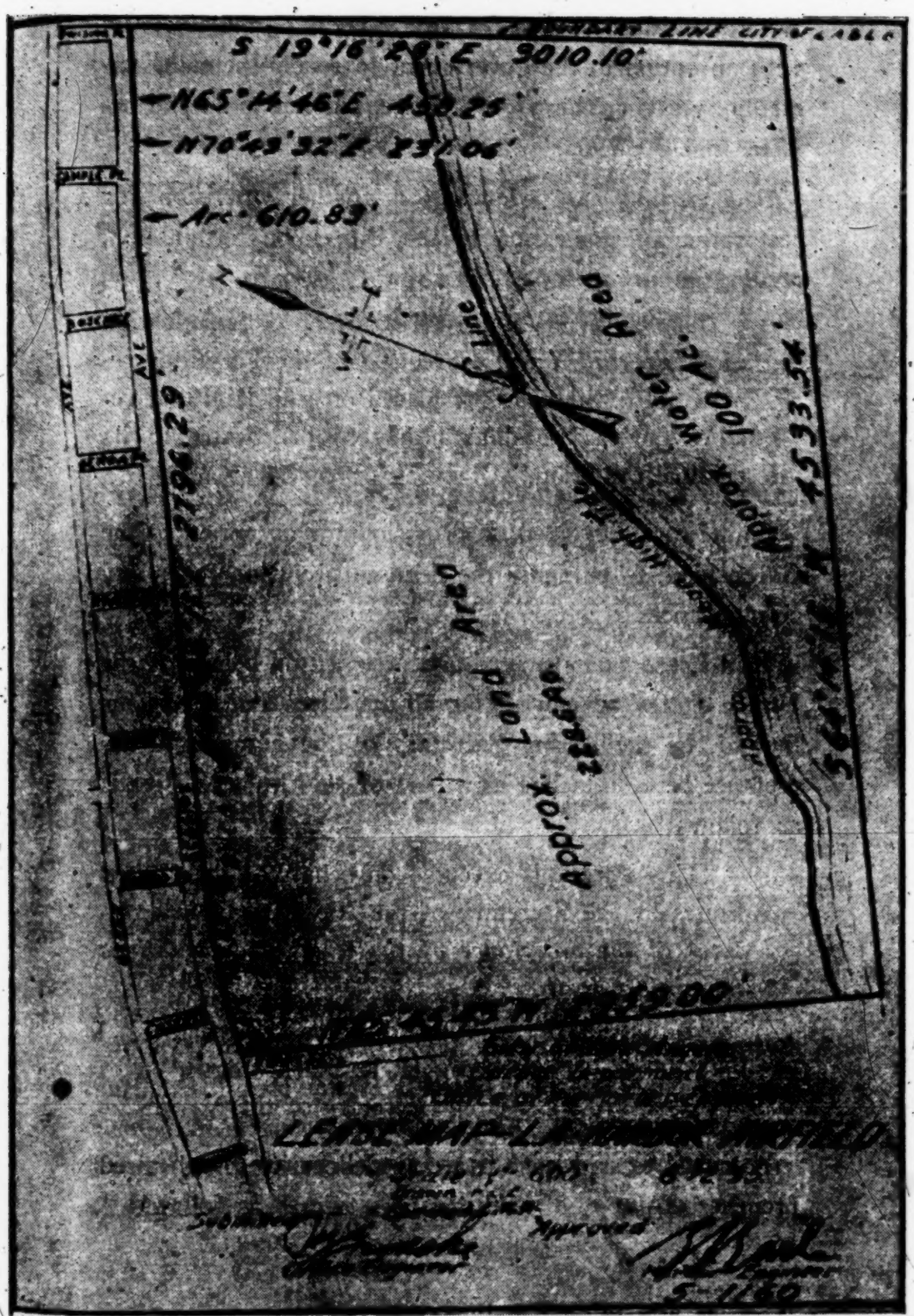
> "The Government agrees that upon the termination of this permit it will on request of the Permittor remove all of its property placed on said land and restore the said land as nearly as practicable to its original condition."

Said Lease contained no provision for an option to the Government to purchase the demised premises under any circumstances.

Said Lease was executed and accepted on behalf of the United States, acknowledging all the terms and conditions thereof, by the Acting Secretary of the Navy, said acceptance being attached as a part of said lease and reads as follows:

> "This Permit is executed on behalf of the United States by the Secretary of the Navy *in acknowledgment of the acceptance of the terms and conditions therein set forth.*
>
> "United States of America
> H. R. Stark (Signed)
> "Acting Secretary of the Navy."

Attached to said lease is a map delineating the demised premises. A copy of said map is set forth as follows:


S 19°16'20"E 3010.10'
N65°14'46"E 453.25'
N70°43'32"E 231.06'
Arc 610.83'
Approx Water Area
100 Ac.
Approx Land Area
Approx 33 Ac.
S 27°06'26"W 2796.26'
N 45°33'54"
Line
Approved

It is shown on said map that 100 acres of the demised premises is "Water Area."

10. On July 13, 1936, the United States Navy addressed a communication to the City of Los Angeles and its Board of Harbor Commissioners advising of the Navy Department's election and approval of the continuance for the fiscal year 1937 of the privileges granted to the United States by Revocable Permit dated July 31, 1935, for the privilege of using lands on Terminal Island for airport purposes. On July 17, 1936, the Los Angeles Board of Harbor Commissioners addressed a communication to the Navy Department acknowledging receipt of said communication of July 13, 1936.

Like communications were sent by the United States Navy to the City of Los Angeles and its Board of Harbor Commissioners annually for the years 1937, 1938 and 1939, and said Revocable Permit dated July 31, 1935, was annually renewed thereafter through June 30, 1940.

(XVI)

A further act of recognition on the part of the United States of the title of the City of Los Angeles in and to the tide and submerged lands in the Pacific Ocean and the Bay of San Pedro, resulting from the granting of a Revocable Lease Permit from the City to the United States to occupy a portion of the "147-acre Tract" for naval landing purposes, is the following:

1. The City of Los Angeles owns a tract of tide and submerged lands in the Outer Harbor known as the "147-

acre Tract," mentioned above. A portion of said Tract adjoins certain upland owned by the City of Los Angeles devoted to recreational purposes and known as "Trona Field."

2. Prior to July, 1932, the United States made application to the City of Los Angeles for a Revocable Lease Permit for the use and occupancy of a portion of the "147-acre Tract" of tide and submerged lands for a landing for naval vessels and watercraft. The Board of Harbor Commissioners of the City of Los Angeles granted its Revocable Permit No. 102, which was executed by the United States through its Navy Department, granting to the United States the use and occupancy of said portion of said "147-acre Tract" for naval landing purposes.

3. Thereafter on August 8, 1932, the Board of Harbor Commissioners granted its Revocable Permit No. 248 superseding and continuing permit No. 102 and the others theretofore granted to the United States and extending the areas leased to the United States. Said permit No. 248 was executed on behalf of the United States by the Commander in Chief of the United States Fleet under direction of the Secretary of the Navy.

4. The Navy Department has enjoyed and occupied the portions of the "147-acre Tract" so granted by the City of Los Angeles and the United States has paid the annual rental therefor in accordance with the terms of said permit.

5. Each of said Revocable Lease Permits No. 102, 248, and others superseded thereby, contains this provision:

> "Permission is hereby granted to the United States Navy Department to occupy and use the following described lands in Los Angeles Harbor, *owned by the City of Los Angeles,* for the uses and purposes and subject to the terms and conditions hereinafter set forth, which said lands are situate in the City of Los Angeles, State of California, * * *"

6. On March 29, 1940, the Commandant of the Eleventh Naval District of the United States Navy made a written request to the Los Angeles Board of Harbor Commissioners that piles be driven and repairs be made to the landings erected in the portion of said "147-acre Tract" covered by said permits and stated in part as follows:

> "It is accordingly requested that in view of the *City's ownership* of these two structures and the purpose for which they are used, that your Department undertake this work of removal and driving of the piles, at no cost to the Navy * * * the Navy will furnish the necessary piles."

Pursuant thereto the City of Los Angeles, at its own expense, constructed said repairs at said landing as requested by the United States.

(XVII)

The United States of America, by and through its various departments and agencies, for a period in excess of 25 years, has requested and obtained from the City of Los Angeles and its Board of Harbor Commissioners, numerous grants, leases, and other interests in and to reclaimed tide and submerged lands in the Inner Harbor of Los Angeles. Likewise, the United States of America has condemned, in a number of instances, reclaimed tide and submerged lands owned by the City of Los Angeles in the Inner Harbor, in which condemnation suits the United States has alleged that the City of Los Angeles was the owner thereof and in which stipulations and decrees have been made and entered, stipulating or adjudging that the City of Los Angeles is the owner of such tide and submerged lands.

A map is set forth next hereinafter, depicting certain (but not all) of the areas of tide and submerged lands in the Los Angeles Harbor owned by the City of Los Angeles granted or leased to, or condemned by, the United States of America from time to time:

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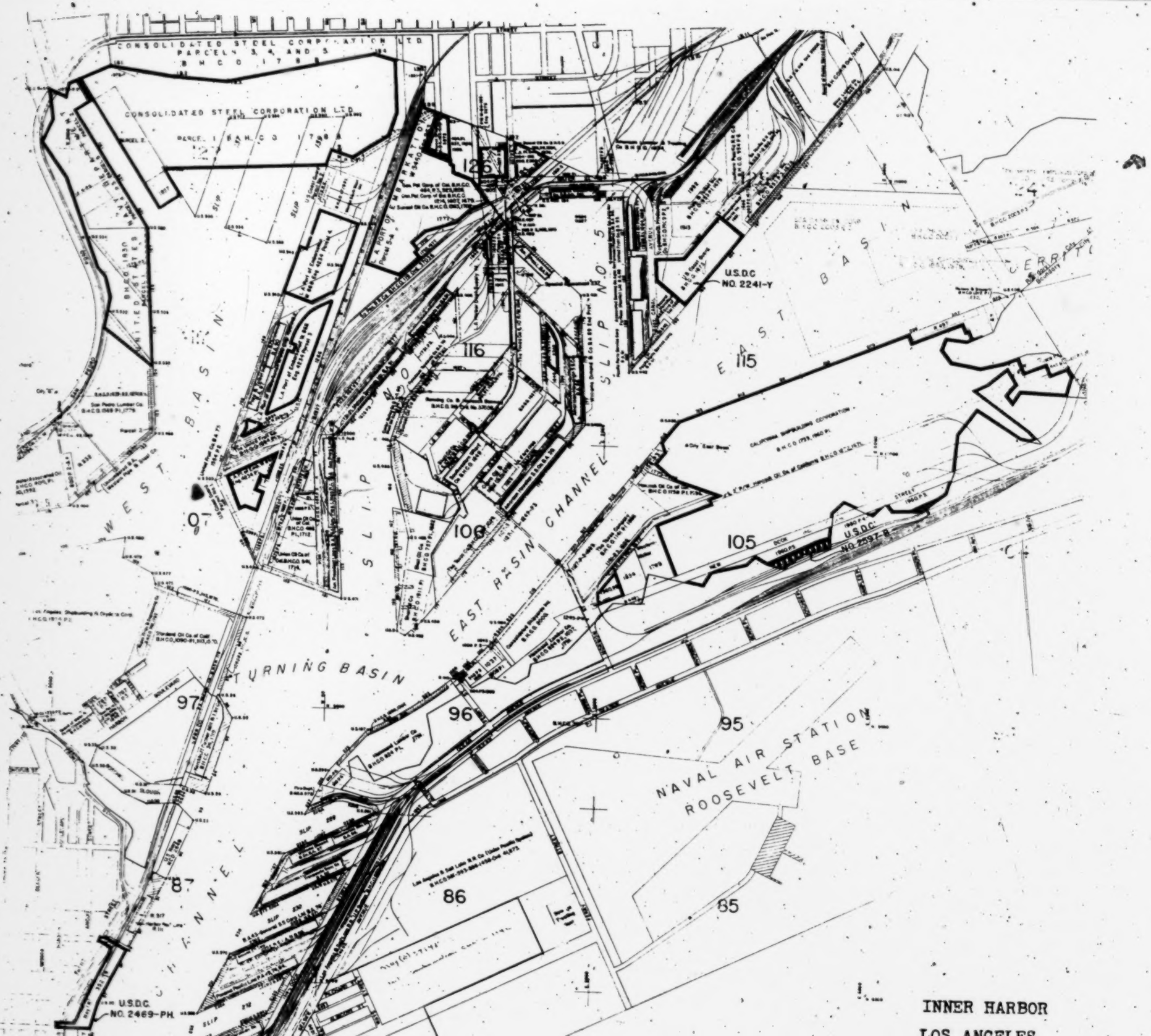

INNER HARBOR
LOS ANGELES

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A synopsis follows of certain (but not all) the leases to and condemnations by the United States of tide and submerged lands owned by the City of Los Angeles in the Los Angeles Harbor area, as shown on the map last hereinbefore set forth:

1. Under date of July 11, 1941, Consolidated Steel Corporation, Ltd., a corporation, entered into an agreement, known as "The Facilities Contract", with the United States of America acting by and through the United States Maritime Commission. Said contract required said corporation, as "Contractor" to construct and operate a shipyard for said Maritime Commission on lands owned by the City of Los Angeles. Said contract provided in part that

(a) "the Contractor will, by permit granted to it by the Board of Harbor Commissioners of the City of Los Angeles, acquire the right to use certain parcels of real estate (referred to thereinafter in said Facilities Contract as 'The Real Estate') located in the City of Los Angeles, California (hereinafter called 'Tract No. 1') for the purpose of constructing and operating the Facilities herein described, * * *".

(b) The title to the Facilities, either completed or in the course of construction, shall be in the Government even though such facilities are fixed to the realty.

(c) That "all wharves, piers, docks, slips, bulkheads, sea walls and channels which, under the terms of the charter of the City of Los Angeles, become the property of said City upon the expiration of the term of the permit."

(d) The Maritime Commission shall reimburse the Contractor for all rent or other charges which the

Contractor may be obliged to pay under any permit or lease for the Real Estate.

(e) If the Contractor so directs the U. S. Maritime Commission shall enter upon the Real Estate and demolish or remove any Facilities installed on Tract No. 1, and in this connection it is provided:

> "Provided that Tract No. 1 of the Real Estate on which the Facilities or such thereof as shall be demolished or removed shall be located, shall be restored so as to leave the same in as good condition as that in which they were immediately prior to the acquisition, construction, or installation of such Facilities thereon; * * *".

(f) The Maritime Commission may take possession of the Real Estate and of the Facilities thereon including all rights of the Contractor under any lease or other agreement with respect to the Real Estate in the event of default by the Contractor thereunder.

(g) "Such permit or other agreements with respect to Tract No. 1 of the Real Estate shall be in form and substance satisfactory to the Commission, and shall include (but without limitation) provisions confirming to the owner and the Commission (as against the owner of said Tract No. 1) the same rights in respect of said Tract and other Facilities, including (but without limitation) the right to take over and operate said Tract No. 1 as herein provided as are granted or are purported to be granted to the owner and Commission by the terms of this contract."

On August 12, 1941, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1788 granted to Consolidated Steel Corporation, Ltd., for the term of five (5) years a permit to use that certain land described as "Tract No. 1" in said "Facilities Contract"

of July 11, 1941, referred to hereinabove in the last preceding paragraph. Said land "Tract No. 1" is and was tide and submerged lands owned by the City of Los Angeles under the jurisdiction and control of the Harbor Department thereof and is depicted on the map hereinabove in this article set forth as "Consolidated Steel Corporation, Ltd. B. H. C. O. 1788 Parcel 1, Parcel 2."

The United States acting by and through the United States Maritime Commission thereafter approved and accepted the terms and provisions of said Order No. 1788.

Commencing on or about the date of said Order No. 1788, Consolidated Steel Corporation, Ltd., took possession of the premises so granted under and pursuant to the terms and provisions of said Order and thereafter utilized said premises in the performance of its obligations under said Facilities Contract.

2. Under date of January 11, 1941, California Shipbuilding Corporation, a corporation, entered into Facilities Contract No. 1284, with the United States of America acting by and through the United States Maritime Commission. The provisions of said contract as amended by a Supplemental Facilities Contract No. 1284 (ESP-1) Addendum No. 1, dated January 25, 1941, and a Second Facilities Contract No. DA-MCc-4, dated April 9, 1941, except that it dealt with different premises, were substantially identical with the provisions of that certain Facilities Contract between the United States of America and the Consolidated Steel Corporation, Ltd., dated July 11, 1941, hereinabove in this article referred to.

On February 18, 1941, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1759 granted to the California Shipbuilding Corporation for a term of five (5) years a permit to use that certain land

referred to as "Real Estate" in said Facilities Contract of January 11, 1941, hereinabove referred to in the immediately preceding paragraph. Said land is and was submerged and tide land owned by the City of Los Angeles under the jurisdiction of the Harbor Department thereof and is depicted on the map hereinabove set forth as "California Shipbuilding Corporation B. H. C. O. 1759 1960 P. 1 P. 2 P. 3 P. 4 P. 5." The provisions of said Order 1759, except as to the terms referred to, were substantially identical with the provisions of Order No. 1788 hereinabove referred to.

The United States acting by and through the United States Maritime Commission thereafter approved and accepted the terms and provisions of said Order 1759.

Commencing on or about the date of said Order 1759, California Shipbuilding Corporation took possession of the premises so granted under and pursuant to the terms and provisions of said Order and has at all times since said date utilized said premises in the performance of its obligations under said Facilities Contract No. 1284 and amendments thereto.

3. On February 18, 1942, the Board of Harbor Commissioners of the City of Los Angeles, by its Order No. 1830, granted to the United States of America, Navy Department, a permit to use certain tide and submerged lands owned by the City of Los Angeles for the purpose of constructing and operating thereon a shipbuilding plant and for purposes incidental thereto. The lands so granted are designated on the map hereinabove set forth by the following: "The United States Navy Department B. H. C. O. 1830 Parcel 1 Parcel 2 Parcel 3 Parcel 4 Parcel 5."

The said Order No. 1830 provided that the permit so granted was

(a) subject to certain permits previously granted to private corporations;

(b) for a term ending February 4, 1947 and for such further five (5) year periods not extending beyond February 4, 1962, as the Government might elect to continue the use of said premises under all the terms and conditions of the permit;

(c) for a rental payable on the first day of each month to the Board of Harbor Commissioners of the City of Los Angeles in the amount of $4,805.28 per month during the first five (5) year period and $6,-471.95 per month during the second five (5) year period.

Plaintiff on or about the aforesaid date of said order entered upon and took possession of said lands under and pursuant to the terms and provisions of said Order No. 1830.

4. On February 15, 1942, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by Lease No. W 868-eng-4234, the premises depicted on the map hereinabove set forth as "L. A. Port of Embarkation W868-eng. 4234 P. 1 P. 2 Parcel 3 Parcel 4" for the purposes of storage and sub-port of embarkation. Said lease provided that:

(a) the term thereof should end on June 30, 1943, renewal thereof was at the option of the United States from year to year;

(b) the United States would not permit the use of said premises by any one other than the Government,

its sublessee, agents or servants and then only for the purposes therein stated;

(c) rental was $3,169.18 per month;

(d) said lease or renewal thereof may not extend beyond the existing emergencies and sixty (60) days thereafter;

(e) the United States if required by lessor shall before the expiration of said lease or renewal thereof restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable wear and tear excepted;

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

This lease was on form "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

5. On November 25, 1942, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, War Department, by Lease No. 3460-eng. 963 those certain tide and submerged lands owned by the City of Los Angeles and depicted upon the map hereinbefore set forth as "L. A. Port of Embarkation W. 3460 eng. 963 Parcel 5A."

The terms and conditions of said lease No. W. 3460-eng. 963 were substantially identical with those of that certain lease W-868-eng. 4234 hereinabove in the preceding paragraph referred to, except for a slight difference in the rent payable thereunder.

This lease was on form "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

6. On the 1st day of October, 1943, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by No. W 04-193 ENG 3075 those certain tide and submerged lands owned by the City of Los Angeles, two parcels of which are described in the map hereinabove set forth as "W-04-193-eng. 3075 Parcel 5C P. 15."

Said lease was on form "CR Form 207" and provided that:

(a) the City of Los Angeles "whose interest in the property hereinafter described, * * * is that of *fee owners*".

(b) the term extended to June 30, 1944, and unless terminated as therein required by the Government should continue from year to year provided that adequate appropriations are available from year to year for the payment of rentals and provided, further, that this lease shall in no event extend beyond sixty (60) days from the date of termination of the unlimited national emergency.

(c) the United States shall pay the City as rental $425.37 per month for Parcel 15 and $245.11 per month for Parcel 5C.

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

7. On November 3, 1943, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by lease No. W 04193 ENG 2349 those certain tide and submerged lands owned by the City of Los Angeles and depicted on the map hereinabove set forth as "W 04-193-ENG. 2349."

Said lease was on form "CR Form 207." The provisions, except as to premises involved and rental due to the City of Los Angeles thereunder were substantially identical with the provisions of that certain lease No. W 04-193 ENG. 3075 hereinabove in the immediately preceding paragraph referred to. Said lease provided for the payment to the City of Los Angeles of $201.84 per month as rental for the use of said premises.

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

8. An action entitled *"United States of America, plaintiff, versus 9.3875 Acres of Land, more or less, situated in the County of Los Angeles, State of California; City of Los Angeles, a municipal corporation; Board of Harbor Commissioners of the City of Los Angeles; et al., defendants,"* was commenced in the District Court of the United States for the Southern District of California, Central Division (being Case No. 2241-Y Civil), an amended complaint in condemnation therein being filed on October 30, 1942. The United States there alleged that it sought to acquire for use by the Coast Guard a leasehold inter-

est or interests for a term of years expiring August 1, 1952, in certain real property described in Paragraph III of said complaint.

It was there alleged

> "that the apparent and presumptive owner of the real property described in Paragraph III of this amended complaint is the City of Los Angeles; that the defendant California Yacht Club is the apparent and presumptive owner of all improvements thereon and of all personal property to be acquired herein."

The lands so referred to and described in said amended complaint are and were tide and submerged lands owned by the City of Los Angeles and are depicted on the map hereinabove set forth by the letters and figures "U. S. Coast Guard. B. H. C. O. 1873, U. S. D. C. No. 2241-Y."

Upon the filing of said complaint and on the date thereof an order for immediate possession was made and entered by said Court, and pursuant thereto the Government entered upon and took possession of said lands.

On October 29, 1942, the Government filed a Declaration of Taking executed by the then Acting Secretary of the Navy, James Forrestal, pursuant to Title 40, section 258-A *et seq.*, U. S. Code, and coincident with the filing thereof paid into Court the sum of $75,000 which was stated in said Declaration to be said Acting Secretary's estimate of the just compensation to be paid for the taking of said property.

On November 10, 1942, the United States of America, the City of Los Angeles, the County of Los Angeles and the California Yacht Club, acting by and through their respective counsel entered into a "STIPULATION FOR

JUDGMENT" which was filed in said action on November 13, 1942. In said stipulation for judgment, in addition to other matters, the parties agreed that the sum of $75,000 was a

> "fair, just and adequate compensation and award of damage for the condemnation and taking by plaintiff of said leasehold estate and interest of the lands so taken."

On November 10, 1942, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1873 granted to the United States of America, Navy Department, a permit authorizing the United States Coast Guard to use and occupy the lands, possession of which had theretofore been taken by the Government pursuant to said condemnation action and declaration of taking therein.

Said Order recited that the representatives of the Government, the Board of Harbor Commissioners of said City, and the California Yacht Club, had agreed upon a settlement of said condemnation action, which settlement provided that said Board should grant to the Government a permit to occupy and use the premises in question for the remainder of the term of the permit theretofore granted to the California Yacht Club expiring on August 1, 1952, at the same rate of compensation as provided for in said permit to the California Yacht Club.

The plaintiff on February 15, 1943, accepted said permit and in doing so used the following language:

> "The undersigned grantee hereby accepts the foregoing permit and agrees to abide by and observe each and every of the terms and conditions thereof."

2. An action entitled *"United States of America, plaintiff, vs. 5.399 Acres of Land, More or Less, in Los An-*

geles County, California; Board of Harbor Commissioners of the City of Los Angeles; City of Los Angeles, a municipal corporation, et al., defendants," was commenced in the District Court of the United States for the Southern District of California, Central Division (being case No. 2469 P. H. Civil), by the filing of a complaint in condemnation on October 3, 1942.

The United States of America appeared in said action, as alleged in said complaint, by a Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States and pursuant to the request of the Acting Secretary of the Navy.

By said action the Government sought to condemn a leasehold interest in said lands located in the inner Los Angeles harbor area, a part of which was owned by the City of Los Angeles.

In said Complaint the Government alleged

> "that the names of the apparent, purported and presumptive owners of the hereinabove described property are the Southern Pacific Railroad and the Board of Harbor Commissioners of the City of Los Angeles, California."

Upon the filing of said complaint and upon the date thereof an order of immediate possession was made and entered by said Court, and pursuant thereto the Government entered upon and took possession of said lands.

On November 1, 1942, the Board of Harbor Commissioners of the City of Los Angeles leased to the United States of America, Navy Department, by lease No. N O Y (R) 35239, the premises sought to be condemned by the Government in said action No. 2469 P. H. Civil.

Said lease was executed on United States Standard Form No. 2 (Revised), approved by the Secretary of the Treasury May 6, 1935.

That said lands so leased are depicted on the map hereinabove set forth as "N O Y (R) 35239 U. S. D. C. No. 2469-P. H." and a portion thereof are and were tide and submergd lands owned by the City of Los Angeles.

On August 1, 1944, the Secretary of Navy, in advising the Attorney General of the United States of the execution of said lease and in requesting the dismissal of said proceedings entitled "United States of America v. 5.399 Acres of Land, *et al.*", said:

> "It has now been determined that the acquisition of a temporary estate in the lands embraced by the above proceeding will be satisfactory. A lease has accordingly been executed by the United States through the Navy Department and the City of Los Angeles, through its Board of Harbor Commissioners. The City of Los Angeles has assumed, in the lease, the obligation of making settlements with any third persons for claims in the leased premises."

3. An action entitled *"United States of America v. Certain Parcel of Land in the City of Los Angeles, et al., defendants"* (being Civil No. 2597-B) was commenced in the District Court of the United States for the Southern District of California, Central Division, by the filing of a complaint in condemnation on November 25, 1942.

The United States of America appeared in said action, as alleged in said complaint, by a Special Assistant to the Attorney General at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Maritime Commission.

By said action the Government sought to condemn certain lands, two parcels of which were tide and submerged lands owned by the City of Los Angeles and under the jurisdiction of the Harbor Department thereof. Said two parcels are depicted on the map hereinabove set forth as "U. S. D. C. No. 2597-B."

In referring to said lands owned by the City of Los Angeles, the Government alleged in said complaint as follows:

> "That the apparent and presumptive owner of parcels 10, 11 and 12 is the defendant, City of Los Angeles."

Upon the filing of said complaint and upon the date thereof an order for immediate possession was issued by said Court and thereupon and pursuant thereto the Government entered upon and took possession of said land.

By a "STIPULATION OF FACTS PURSUANT TO PRETRIAL HEREIN" filed in said action on September 6, 1945, the plaintiff and the City of Los Angeles, acting by and through their respective counsel, stipulated as follows:

> "That the defendant, City of Los Angeles, on or about November 24, 1942, and at all times since, has been the owner in fee simple absolute of the property designated in the complaint on file herein as parcels 10 and 11. . . ."